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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1980

HAVENS REALTY CORPORATION AND ROSE JONES,
Petitioners,

v.

SYLVIA COLEMAN, R. KENT WILLIS
AND
HOUSING OPPORTUNITIES MADE EQUAL,
Respondents.

ON WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

BRIEF FOR RESPONDENTS

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QUESTIONS PRESENTED

1. Whether individuals have standing to sue under the Fair Housing Act when they have alleged that they are residents of a community affected by defendants' practice of racial steering, which has deprived them of the benefits of interracial associations.

2. Whether an individual who seeks rental information from a defendant has standing to sue under the Fair Housing Act when that individual has alleged that the defendants knowingly, on the basis of race, gave misinformation regarding the availability of rental housing.

3. Whether a nonprofit membership organization which provides direct housing counseling services to homeseekers has standing under the Fair Housing Act to seek redress for injury, on its own behalf for interference with its normal operations and on behalf of its members for deprivation of the right to the benefits of interracial associations, caused by defendants' discriminatory practices.

4. Whether a policy, pattern or practice of discrimination is cognizable as a continuing violation of the Fair Housing Act, when at least one of the series of discriminatory incidents occurs within the 180-day limitations period.

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OPINIONS BELOW

The Opinion of the Court of Appeals for the Fourth Circuit is reported at 633 F.2d 384 (4th Cir. 1980). The Memorandum Opinion and Order of the District Court for the Eastern District of Virginia (Joint Appendix at 32-35), reversed by the court of appeals, is unreported. Relevant Findings of Fact entered in the only cause of action in this case which survived the motion to dismiss and proceeded to trial, *Coles v. Havens Realty Corp.*, No. 79-0024-R (E.D. Va., Jun. 23, 1980), are unreported

and appear in Appendix A of this brief. The Consent Order entered in that case is reprinted in Eq. Opp. Hsg. Rptr. (P-H) ¶ 18,031 (E.D. Va. 1981) and Appendix B of this brief.

CONSTITUTIONAL PROVISION AND STATUTES INVOLVED

Texts of the following constitutional provision and statutes are set forth in full in Appendix C of this brief:

United States Constitution, article III, section 2, clause 1

Civil Rights Act of 1866

14 Stat. 27, 42 U.S.C. § 1982

Fair Housing Act, Title VIII of the Civil Rights Act of 1968 (1977)

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STATEMENT OF THE CASE

This case began as a challenge to the practice of racial steering in Richmond, Virginia, an area scarred by segregated housing patterns. In its present posture, however, the case challenges this Court's prior decisions according broad standing in fair housing cases, consistent

with the purpose and language of the Fair Housing Act[1] that there be strong private enforcement of the Act. A review of the record in this case shows that by its summary dismissal of the complaint, the district court misconstrued the law and applied a narrow approach to standing under the Fair Housing Act, contrary to the opinions of this Court and Congress' intent.[2]

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[1]The Fair Housing Act, 42 U.S.C. §3601 *et seq.*, is a comprehensive law designed to eliminate discrimination in virtually all aspects of housing rental and sales. The Act makes it unlawful to refuse to negotiate, sell or rent a dwelling on the basis of a person's race, 42 U.S.C. §3604(a); prohibits differentiation in the terms of sale, rental or services provided because of race, 42 U.S.C. §3604(b); prohibits advertising a preference based on race in connection with housing, 42 U.S.C. §3604(c); prohibits falsely telling anyone that a dwelling is not available for inspection, sale or rental because of the person's race, 42 U.S.C. §3604(d); and prohibits "blockbusting," or inducing people to sell because of the threat that members of another race may move into the neighborhood, 42 U.S.C. §3604(e). The Act also addresses certain services related to housing, such as access to multiple listing services, 42 U.S.C. §3606, and availability of financing for the repair or purchase of housing, 42 U.S.C. §3605. Finally, the Act makes it unlawful to interfere with any person who asserts or helps another to assert the rights secured by the Act. 42 U.S.C. §3617.

[2]Congress intended that private enforcement would be the principal mechanism for effectuating the purposes of the Act, and expressly limited the rights of the government. 42 U.S.C. §3613. For private parties, on the other hand, the Act creates a right of civil action with direct access to the courts, 42 U.S.C. §3612, with an opportunity first to attempt conciliation through the intervention of state and federal agencies, 42 U.S.C. §3610. This Court has recognized such intent by interpreting the Act as according standing as broadly as permitted by the Constitution, without regard to judicially imposed prudential limitations.

On January 9, 1979, respondents Paul Coles ("Coles"), Sylvia Coleman ("Coleman"), R. Kent Willis ("Willis") and Housing Opportunities Made Equal ("HOME") filed an action in the United States District Court for the Eastern District of Virginia alleging that petitioners Havens Realty Corporation and one of its employees, Rose Jones (collectively referred to as "Havens"), had engaged in the practice of racial steering in the Richmond area in violation of the Civil Rights Act of 1866, 14 Stat. 27, 42 U.S.C. § 1982 (1977), and the Fair Housing Act of 1968, 82 Stat. 81, 42 U.S.C. § 3601 *et seq.* (1977). Respondent HOME is a Virginia nonprofit membership corporation which provides services to residents of the Richmond area in order to promote and maintain access to housing on a nondiscriminatory basis. Respondents Coleman and Willis were employees of HOME and residents of the Richmond area. Havens Realty Corporation is a Virginia corporation engaged in the sale and rental of housing in the Richmond area. Havens' principal place of business is at two apartment complexes, Camelot Townhouse Apartments and Colonial Court Apartments, in Henrico County, Virginia, just outside the Richmond city line.

Respondents alleged, and the district court later found, that Havens had engaged in a consistent practice of denying and limiting access to housing on the basis of race by lying to blacks who inquired about vacancies in apartments managed by the firm. As evidence of this practice, the complaint described five examples, between March 14, and July 13, 1978, of Havens' discriminatory policy. In each instance Havens had given different information about apartment availability in response to inquiries made by Coles, a black homeseeker who had sought HOME's counseling concerning rental housing,

and by Coleman, a black HOME employee, than it had given to two white HOME employees, Willis and John Barr (Complaint ¶¶ 12, 13; App. 15-17).[3] Respondents alleged that Havens' racial steering practices contributed to existing neighborhood segregation and inhibited the development of stable, racially integrated neighborhoods in the Richmond area (Complaint ¶ 10; App. 14) and that Respondents were injured as a result of Havens' discriminatory practices because they had been denied the benefits of interracial associations (Complaint ¶¶ 12, 14-16; App. 15, 17-18). Respondents sought declaratory and injunctive relief, compensatory and punitive damages and attorneys' fees for themselves and on behalf of a class of all persons who had rented or sought to rent property and who were adversely affected by Havens' racial steering practices (Complaint ¶ 2; App. 12).

On January 31, 1979, Havens filed a combined answer and motion to dismiss all of respondents' claims against Havens, alleging, among other things, that most of respondents' claims were time-barred and that respondents Coleman, Willis and HOME lacked standing to assert claims under the Fair Housing Act of 1968 and the Civil Rights Act of 1866 (App. 21-28). Without benefit of any response from respondents,[4] the district judge dismissed the claims of three of the four plaintiffs, Coleman, Willis and HOME, on the now discredited rule from *TOPIC v. Circle Realty*, 532 F.2d 1273 (9th Cir.),

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[3]All references to App. are references to pages in the Joint Appendix.

[4]Counsel for plaintiffs and defendants had agreed to a four-day extension of the deadline for filing plaintiffs' opposition to the motion to dismiss. Unfortunately, there was an inadvertent failure to secure the court's formal approval of the agreed-upon extension, as required by local rules.

cert. denied, 429 U.S. 859 (1976), that "indirect" victims of racial steering practices do not have standing to assert claims under section 812 of the Fair Housing Act (App. 33-34).[5]

In its memorandum opinion, the district court dismissed all of respondents' claims as time-barred under the 180-day statute of limitations of the Fair Housing Act, 42 U.S.C. § 3612(a), but ruled that none of the claims was time-barred under the two-year statute of limitations applicable to 42 U.S.C. § 1982 (App. 33). The court then stated that HOME was not a proper party, citing, without discussion, *Warth v. Seldin*, 422 U.S. 490 (1975), and *TOPIC v. Circle Realty*, *supra* (App. 33-34). Although the court stated that "no affirmative offer need be shown in order to state a claim" and noted that Coleman and Willis had alleged deprivation of benefits from interracial associations, the court dismissed the claims of Coleman and Willis on the grounds that they had sought only to develop evidence for this lawsuit rather than to attempt in good faith to rent residential property from Havens, that they sought to vindicate the rights of third parties, that Coleman and Willis asserted no more than the general public interest, and that Coleman and Willis failed to allege that, absent Havens' discriminatory practices, Coleman and Willis would reside in integrated communities (App. 34).[6] The

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[5] This Court ruled in *Gladstone, Realtors v. Village of Bellwood*, 441 U.S. 91, 100 (1979), that plaintiffs may assert the rights of third parties under 42 U.S.C. § 3612.

[6] Because the first portion of the memorandum opinion dismissed respondents' claims under the Fair Housing Act as time-barred, it is unclear whether the subsequent paragraphs addressing the sufficiency of the respondents' claims were directed solely to § 1982 of the Civil Rights Act of 1866, or whether the district court was also ruling on the sufficiency of the pleadings under the Fair Housing Act of 1968.

district judge cited no cases in support of his conclusion on the insufficiency of the pleadings with respect to Coleman and Willis.

Respondents requested the district court to reconsider its dismissal, noting this Court's imminent decision in *Bellwood* (App. 44-46), and suggested that a decision on the standing of HOME be delayed until after the taking of an already scheduled deposition (App. 51 n.6). This request, however, was also denied (App. 55).

The district court allowed the claims of plaintiff Coles and later certified a class, represented by Coles, of all black persons who may have been injured monetarily by the racial steering practices of Havens on or since January 9, 1977 (corresponding to the 2-year limitations period applicable to the Civil Rights Act of 1866), as well as a subclass of those injured on or since July 13, 1978 (corresponding to the 180-day limitations period applicable to the Fair Housing Act). At a bench trial, the district court found that:

> Havens Realty established a policy of discrimination against black people in the rental of its apartments. This was a policy which was intended to discourage the rental of apartments to blacks. It took the form of being unreceptive to black persons who sought to rent, giving them misinformation or grudgingly giving them correct information, being meticulous in scrutinizing their applications to see if there would be an excuse for turning them down within the guidelines set forth for rental and in general making it more difficult for a black applicant to be successful than a white applicant. This was a conscious and deliberate policy on the part of Havens Realty. . . .
>
> The effect of this discriminatory policy was to violate the provisions of the Fair Housing Act and

to violate the provisions of the Civil Rights Act of 1866.[7]

On February 17, 1981, the court entered a consent order which required Havens to create a fund of $13,500 to pay any class member demonstrating injury as a result of Havens' steering practices; permanently enjoined Havens from violating the terms of the two acts; and ordered Havens to take affirmative action over the next three years to establish rental criteria, advertise apartment availability, collect information from rental applicants and make reports to the Virginia Real Estate Commission on Havens' compliance with the consent order. (*See* Appendix B of this brief.) The consent order did not provide damages for Coleman, Willis or HOME, however, and left intact the district court's denial of standing.[8] Respondents appealed the decision of the

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[7] Findings of Fact of Hon. D. Dortch Warriner, No. 79-0024-R (E.D. Va., Jun. 23, 1980), Appendix at 1a.

[8] It has been suggested that the Court should not reach the merits of this case because the controversy may be moot as a result of the consent order entered in the *Coles* case. Respondents agree that the claims on behalf of HOME members may have been rendered moot by the injunctive relief obtained in that consent order. If so, the petition for writ of certiorari with respect to HOME's representational standing should be dismissed as improvidently granted.

Respondents take serious issue, however, with the position that the other claims in this case also have been rendered moot. The consent order resolves only the claims of "all *plaintiffs*, including those that may hereafter be joined by the court pursuant to the class certification of this action . . ." (emphasis added). None of the respondents here were plaintiffs in *Coles* when the consent order was entered, since the district court had specifically dismissed Coleman, Willis and HOME two years earlier, nor were they parties to the consent order. Moreover, their claims for damages were not covered by the order. Thus, although the consent order may have rendered moot the respondents' claims for injunctive

[footnote continued]

district court denying them standing.[9]

The court of appeals reversed the decision of the district court in its entirety and remanded the case for trial. The court granted standing to Willis and Coleman in their capacity as "testers" on the grounds that the policy expressed in section 804(d) of the Fair Housing Act and in two civil rights cases, *Pierson v. Ray*, 386 U.S. 547 (1967), and *Evers v. Dwyer*, 358 U.S. 202 (1958), creates a right for "bona fide surrogates" to bring cases under the Fair Housing Act on behalf of those illegally denied housing (App. 71-72). Following *Bellwood* and *Trafficante v. Metropolitan Life Insurance Co.*, 409 U.S.

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relief, respondents' claims for money damages still remain. It is well established that an outstanding damage claim "supplies the constitutional requirement of a case or controversy," even if other issues presented become moot. *Powell v. McCormack*, 395 U.S. 486, 497 (1969). Indeed, if this Court were to hold that respondents' claims are moot as a result of the consent order, it would imply that respondents have standing to assert their claim, since Coleman, Willis and HOME can only be bound by the consent order if they are considered to be "plaintiffs" or members of the class in *Coles*.

[9]By the time the case was set for argument in the Court of Appeals for the Fourth Circuit, the district judge apparently had second thoughts about his ruling on HOME's standing in light of subsequent rulings of this Court in *Gladstone, Realtors v. Village of Bellwood*, 441 U.S. 91 (1979), and of the Fifth Circuit in *Broadmoor Improvement Ass'n v. Stan Weber & Assoc., Inc.*, 597 F.2d 568 (5th Cir. 1979). At the judge's request, counsel for respondents moved pursuant to Rule 60(b)(6) of the Federal Rules of Civil Procedure to vacate that portion of the final judgment concerning HOME. The district court entered a formal request to the court of appeals for a remand of the case to the district court. *See Turner v. A.B. Carter, Inc.*, 85 F.R.D. 360, 363 n.3 (E.D. Va. 1980). The court of appeals considered the question of HOME's standing, however, without first remanding the issue to the district court for reconsideration.

205 (1972), the court held that the allegations are "sufficient to grant standing for each of them as individual plaintiffs" deprived of the benefits of interracial associations (App. 71-72). The court of appeals also held that HOME had standing as a representative of its members, following *Warth v. Seldin*, 422 U.S. 490 (1975), and *Hunt v. Washington State Apple Advertising Comm'n*, 432 U.S. 333 (1977), and as an injured party on its own behalf, based on *Sierra Club v. Morton*, 405 U.S. 727 (1972), and *Village of Arlington Heights v. Metropolitan Housing Development Corp.*, 429 U.S. 252 (1977) (App. 75-76). Finally, the court of appeals found that respondents and Havens had a "continued relationship" and that Havens' discriminatory treatment of respondents constituted a continuing violation of the Fair Housing Act. Hence, respondents' claims were not barred by the 180-day statute of limitations of the Fair Housing Act since the violation continued into the limitations period (App. 81).

SUMMARY OF THE ARGUMENT

I

The district court precipitously dismissed the claims of Coleman, Willis and HOME on the basis of the ruling in *TOPIC v. Circle Realty*, 532 F.2d 1273 (9th Cir.), *cert. denied*, 429 U.S. 859 (1976), since discredited by this Court in *Gladstone, Realtors v. Village of Bellwood*, 441 U.S. 91, 109 (1979), that "indirect" victims of discriminatory practices do not have standing under section 812 of the Fair Housing Act. This, by itself, was reversible error. The complaint alleged injury sufficient to accord standing to respondents. Even assuming that the complaint was not sufficient, however, this Court recognized in *Bellwood* that the unique nature of suits

under the Fair Housing Act requires the consideration of special facts, going beyond the usual allegations of the pleadings. The district court in this case dismissed the claims on the basis of the complaint alone without giving respondents an opportunity to supplement the record.

II

Coleman and Willis have standing based on their claim that Havens' racial steering practice deprived them of the benefits of interracial associations, describing their injury and a nexus to defendants' acts in virtually the same terms as did the individual plaintiffs in *Trafficante v. Metropolitan Life Insurance Co.*, 409 U.S. 205 (1972), and *Bellwood*. Additionally, Coleman, a black woman, has standing under section 804(d) of the Fair Housing Act to redress her legal and personal injury occasioned by Havens' discriminatory misrepresentations to her concerning the availability of rental housing. The abrupt dismissal of the complaint precluded Coleman and Willis from developing fully the factual basis for allegations sufficient on their face to accord standing.

III

HOME has standing based on its claim of injury to its operations and to its members as a result of Havens' racial steering practices. Unlike the so-called "ideological plaintiffs" dismissed in *Sierra Club v. Morton*, 405 U.S. 727 (1972), and *Simon v. Eastern Kentucky Welfare Rights Organization*, 426 U.S. 26 (1976), HOME's primary activity is to provide housing services to large numbers of clients in the Richmond area, some pursuant to contracts with the City of Richmond. Havens' racial steering practices directly and adversely affect HOME's ability to disseminate accurate housing information

needed by its black and white clients. HOME's long-standing involvement in housing counseling is not an abstract concern with fair housing, but provides the "personal stake in the outcome of a controversy" which this Court has held to be the prerequisite for standing. *Warth v. Seldin*, 422 U.S. 490, 499 (1975). Further, HOME is a proper representative of its members under the three-part test set forth in *Hunt v. Washington Apple Advertising Comm'n*, 432 U.S. 333, 343 (1977).

IV

The complaint alleged that Havens engaged in a policy, pattern and practice of racial steering, describing, as examples, five interconnected incidents over a four-month period between respondents and Havens. Respondents' claims, based on these incidents, are timely under the 180-day statute of limitations in the Fair Housing Act because the practice of racial steering complained of occurred during the limitations period. The continuing violation theory is applicable to this case because at least one of the connected incidents occurred within 180 days of the filing of this action, *Concerned Tenants Ass'n of Indian Trails Apartments v. Indian Trails Apartments*, 496 F. Supp. 522 (N.D. Ill. 1980), and because it was brought as a class action alleging a pattern and practice of discrimination, *Meyers v. Pennypack Woods Home Ownership Ass'n*, 559 F.2d 894 (3d Cir. 1977).

ARGUMENT

I.

THE COURT OF APPEALS WAS COMPELLED BY THIS COURT'S DECISION IN *BELLWOOD* TO REVERSE THE DISTRICT COURT'S ERRONEOUS DISMISSAL OF THE COMPLAINT.

A review of the record shows that this case was decided by the district court under an incorrect rule of law and

that the precipitous dismissal of the complaint has thwarted meaningful substantive review by this Court. The district court dismissed the complaint relying on the theory developed in *TOPIC v. Circle Realty*, 532 F.2d 1273 (9th Cir.), *cert. denied*, 429 U.S. 859 (1976), that "indirect" victims of racial steering do not have standing to sue under section 812 of the Fair Housing Act. Subsequent to the district court's dismissal, this Court held that, in view of the need for strong private enforcement of the Act, "[s]tanding under § 812, like that under § 810, is 'as broa[d] as is permitted by Article III of the Constitution.'" *Bellwood, supra* at 109, *quoting Trafficante v. Metropolitan Life Insurance Co.*, 409 U.S. 205, 209 (1972). In so holding, this Court rejected the application of prudential limitations to standing under the Act and expressly permitted claims for injury by "indirect" as well as "direct" victims of racial steering. In view of this legal development, the court of appeals was compelled to correct the decision of the district court by reversing and remanding the case.

Respondents claimed that they had been injured as a result of Havens' racial steering practices in violation of the Fair Housing Act. Since facts alleged in the complaint are presumed true and construed liberally in favor of plaintiffs,[10] their claims were sufficient to

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[10]It is well established that a complaint should not be dismissed for failure to state a claim "unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." *Hospital Building Co. v. Trustees of Rex Hospital*, 425 U.S. 738, 746 (1976); *Jenkins v. McKeithen*, 395 U.S. 411, 421-22 (1969); *Conley v. Gibson*, 355 U.S. 41, 45 (1957). This rule is fundamental to our notice pleading system and is a necessary corollary to Rule 8 of the Federal Rules of Civil Procedure. *Id.* at 48.

withstand a motion to dismiss. Moreover, even assuming that the complaint had been found to be insufficient, it is inappropriate to resolve a standing challenge without allowing the plaintiff to develop key aspects of the complaint, particularly where, as here, respondents requested such an opportunity. This is especially true in the still-evolving legal area of fair housing, where the factual basis which may establish a claim is rooted in the particular geographic and demographic circumstances of a given community.

The following sections of this brief establish that the claims of Coleman, Willis and HOME meet article III requirements for standing. This section compares the record available in this case to those in other standing cases reviewed by this Court. As is made evident by this comparison, the court of appeals correctly remanded the case for further factual development of the claims.

In *Warth v. Seldin*, 422 U.S. 490 (1975), this Court reviewed a standing question "[u]pon consideration of the complaints and of extensive supporting materials submitted [to the trial court] by petitioners." *Id.* at 497. Justice Powell, after observing that "trial and reviewing courts must accept as true all material allegations of the complaint, and must construe the complaint in favor of the complaining party", wrote in favor of the practice that encouraged informed decision-making:

> At the same time, it is within the trial court's power to allow or to require the plaintiff to supply, by amendment to the complaint or by affidavits, further particularized allegations of fact deemed supportive of plaintiff's standing. If, *after this opportunity*, the plaintiff's standing does not adequately appear from all materials of record, the complaint must be dismissed.

Id. at 501-02 (emphasis added). Similarly, *Trafficante* was decided on a summary judgment motion, on the basis of "voluminous memoranda," 322 F. Supp. 352, 353 (N.D. Cal. 1971).

In this Court's recent decision construing the Fair Housing Act, *Gladstone, Realtors v. Village of Bellwood,* 441 U.S. 91 (1979), this Court reviewed a challenge to the standing of the Village of Bellwood and six individuals who alleged injury caused by the racial steering practices of two realtors. In addition to the complaint, the trial court had reviewed admissions, answers to interrogatories, and exhibits prior to disposing of the standing motion. *Id.* at 109 n.22. This Court granted standing to the Village and four of the plaintiffs, based on the complaints "as illuminated by subsequent discovery." *Id.* at 95.[11] The Court affirmed the district court's dismissal of two individual plaintiffs who were not residents of the "target area" because the complaint did not allege injury to plaintiffs who resided outside that area. This Court left open the possibility, however, that given the opportunity to amend their complaint to allege such injury, such allegations would be sufficient to justify standing. *Id.* at 112 n.25. Of particular significance is Justice Powell's observation that in a case under the Fair Housing Act in which a plaintiff alleges deprivation of the benefits of interracial associations, it is necessary to inquire into the nature of the community alleged to have been injured by defendant's actions, the

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[11] For example, the four individual plaintiffs were held to have standing as residents of the "target area". All the *Bellwood* complaint alleged with respect to residence, however, was that plaintiffs "were citizens of the United States of America who reside in Cook County, Illinois." (*Bellwood,* Joint App. 4, 5). The fact that they resided in the target area was established by evidence presented subsequent to the complaint.

nature and extent of a realtor's business and the types of housing involved. *Id.* at 114 and n.29. As Justice Powell wrote:

> Evidence of this kind may be relevant to the establishment of the necessary causal connection between the alleged conduct and the asserted injury. Respondents apparently attempted to discover such information, but summary judgment was entered against them before this was accomplished.

Id. at 114 n.29.

In short, in a Fair Housing Act case where allegations of cognizable injury are made, the complaint should not be dismissed on the pleadings, but rather "[t]he presence of a genuine injury should be ascertained on the basis of discrete facts presented at trial."[12] *Id.* at 114. District courts have followed these guidelines in Fair Housing Act cases by allowing plaintiffs to submit supporting material or make additional allegations in support of their standing.[13]

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[12]Other cases in which this Court reviewed challenges to a plaintiff's standing on a substantial record are *Duke Power Co. v. Carolina Environmental Study Group, Inc.*, 438 U.S. 59, 67-68 (1978) (standing granted after extensive discovery by both parties and an evidentiary hearing); *Simon v. Eastern Kentucky Welfare Rights Organization*, 426 U.S. 26, 37 (1976) (standing denied on summary judgment motion with supporting affidavits); and *Sierra Club v. Morton*, 405 U.S. 727, 731 (1972) (standing denied after two days of hearings).

[13]*E.g., Heights Community Congress v. Hilltop Realty Inc.*, No. C-79-422 (N.D. Ohio, Dec. 31, 1980) (decision on summary judgment motion on standing issue taken after depositions, interrogatories and production of documents); *Sherman Park Community Ass'n v. Wauwatosa Realty Co.*, 486 F. Supp. 838, 842 (E.D. Wis. 1980) (action on defendant's motion for judgment on the

[footnote continued]

The complaint in this case alleges a cognizable injury to respondents resulting from Havens' racial steering practices and requests injunctive and monetary relief to redress that injury. This complaint is not fundamentally flawed and its dismissal was not appropriate.[14] *Bellwood* teaches that critical components of claims under the Fair Housing Act may not be susceptible to resolution on the pleadings, 441 U.S. at 114. Information about the size and nature of defendant's operation, a necessary aspect of the trial court's standing inquiry

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pleadings taken after complaint had been amended, interrogatories and brief were made available to the court); *Huertas v. East River Housing Corp.*, 81 F.R.D. 641, 644-45 (S.D.N.Y. 1979) (motion to dismiss denied on the basis of plaintiffs' affidavits and briefs from both parties); *Wheatley Heights Neighborhood Coalition v. Jenna Resales Co.*, 429 F. Supp. 486, 488-89 and n.2 (E.D.N.Y. 1977) (plaintiffs' motion for judgment on the pleadings denied after court received plaintiffs' affidavits and *amicus curiae* brief of Department of Justice).

[14]This Court has on several occasions affirmed a district court's dismissal of a complaint for lack of standing based only on the complaint. However, these cases, none of which concerned fair housing, involved complaints that were structurally defective. That is, they lacked one of the three requisite components of a colorable claim: (1) allegation of judicially cognizable injury to plaintiff; (2) caused by defendant's acts or omissions; (3) which is likely to be remedied by the requested judicial intervention. *O'Shea v. Littleton*, 414 U.S. 488, 493 (1974) (complaint failed to allege an actual injury to plaintiffs). In *Schlesinger v. Reservists Committee to Stop the War*, 418 U.S. 208 (1974), *United States v. Richardson*, 418 U.S. 166, 174-75 (1974) and *Linda R.S. v. Richard D.*, 410 U.S. 614, 618 (1973), the complaints alleged no nexus between the claimed injury and the challenged government action. These cases evidence that, in the context of standing motions, this Court has upheld district courts' dismissals of complaints on the pleadings only when the chain of causation alleged in the complaint is so flawed it is clear that, even liberally construing the complaint, *no* set of facts could be adduced that would prove a claim.

since *Bellwood*, is often available to a plaintiff only through the discovery process. *Id.* at 114 n.29. Similarly, development of the facts alleged in the complaint can assist a trial judge to better evaluate whether a plaintiff has actually been injured by defendant's actions.[15] Judge Sprouse, writing for the Fourth Circuit, recognized this by observing that *Bellwood* contemplated the opportunity to develop the "nexus" between Havens' discriminatory acts and the "area" where Coleman and Willis reside either by amendment to the complaint or proof at trial (App. 77-78).

There is a clear parallel between the case at bar and *Bellwood*. As in this case (App. 34), the district court in *Bellwood* relied on *TOPIC v. Circle Realty*, 532 F.2d 1273 (9th Cir.), *cert. denied*, 429 U.S. 859 (1976), and applied the wrong legal standard to dispose of plaintiffs' claim on the ground that section 812 of the Fair Housing Act did not contemplate suits by "indirect" victims of discrimination. *Bellwood*, 441 U.S. at 96. Thus, if this Court affirms, the district court on remand will have the opportunity to reconsider whether respondents Coleman, Willis and HOME have standing under the standards set out in *Bellwood*. *Accord, Broadmoor Improvement Ass'n v. Stan Weber & Assoc., Inc.*, 597 F.2d 568 (5th Cir. 1979).

The fundamental pleading rule that underlies analysis of a complaint—that trial and reviewing courts must accept as true the plaintiffs' allegations and construe the complaint in their favor—requires as a matter of fair and efficient judicial administration that plaintiffs

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[15] For example, in the present case the trial court could have brought the standing issue into clearer focus by noting the location and type of housing in which Coleman and Willis lived in relation to the location and type of housing owned by Havens.

be allowed to support such allegations or, if necessary, amend the complaint. The wisdom of this rule is clearly evidenced in this case where the parties and the judiciary have spent two and one-half years reviewing the district court's hasty dismissal of respondents' complaint five weeks after it was filed. The peculiar circumstances of this case, in which one plaintiff's claim continued to trial on the merits and to a judicial determination that defendant engaged in a "conscious and deliberate . . . discriminatory policy" in violation of the Fair Housing Act and the Civil Rights Act of 1866, show that what, at first glance, may appear to be a rigorous judicial attempt to weed out frivolous claims, may instead be a judicial failure to hear and redress real claims for injuries to rights created by Congress.

II.

PLAINTIFFS-RESPONDENTS COLEMAN AND WILLIS HAVE STANDING UNDER THE FAIR HOUSING ACT BECAUSE THEY HAVE ALLEGED INJURY TO THEMSELVES AS A RESULT OF HAVENS' UNLAWFUL RACIAL STEERING PRACTICES.

Coleman and Willis alleged that Havens' practices impeded the integration of their communities, depriving them of the benefits of interracial associations (Complaint ¶¶ 14, 15; App. 17). Coleman also claimed that she personally was injured by Havens' repeated illegal efforts to steer her away from certain apartment buildings because of her race (Complaint ¶ 17-18; App. 18-20). The district court dismissed their claims on the ground that their action was an effort to vindicate the rights of third parties and also denied Coleman standing for her claim of personal injury because it had been inflicted while she was employed in her capacity as a tester (App. 34). The court of appeals reversed, holding that Coleman

and Willis had standing both as "bona fide surrogates" of individuals who have been illegally denied housing and as persons claiming deprivation of the benefits of interracial associations.[16]

Respondents Coleman and Willis have standing to sue because their claims meet the requirements of article III of the Constitution: they have alleged "a distinct and palpable injury" resulting from Havens' unlawful racial steering practices. *Warth v. Seldin*, 422 U.S. 490, 501 (1975). The court of appeals' decision reversing the district court and remanding the case to allow Coleman and Willis to proceed with their claims should be affirmed.

A. Coleman And Willis Have Standing To Sue Under *Bellwood* Because They Have Alleged That Havens' Racial Steering Practices Have Deprived Them Of Their Right To The Benefits Of Interracial Associations

Coleman and Willis alleged that, as a result of Havens' discriminatory racial steering practices, they have been deprived of "the right to the important social, profes-

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[16] Distinctions between "testers" and individuals who actually intend to rent or purchase property are relevant only to claims under subsection (a) of § 804 of the Fair Housing Act. This section requires that a "bona fide offer" have been made before a refusal to rent or sell is deemed to be a violation of the Act. The claims of plaintiffs Coleman and Willis arose under subsection (d) of § 804 of the Fair Housing Act. There is a clear distinction in the statutory language between § 804(a), which requires a bona fide offer, and § 804(d), which does not. Indeed, the legislative history confirms that the requirement of a bona fide offer applies only to the first clause of § 804(a). 114 *Cong. Rec.* 5515 (1968). The designation of Coleman and Willis as "tester plaintiffs" in some of respondents' papers filed in this case was intended only as a means of distinguishing them from plaintiff Paul Coles, who was a bona fide homeseeker.

sional, business and economic, political and aesthetic benefits of interracial associations that arise from living in integrated communities free from discriminatory housing practices." (Complaint ¶¶ 14, 15; App. 17). This Court has held such injury "sufficient to satisfy the constitutional standing requirement of actual or threatened harm." *Bellwood*, 441 U.S. at 112, *citing Trafficante v. Metropolitan Life Insurance Co.*, 409 U.S. 205, 210 (1972).

Since the district judge believed that claims of deprivation of interracial associations were not cognizable under the Fair Housing Act,[17] he did not consider whether the complaint was adequate in this regard. Willis' and Coleman's allegations, however, were sufficient to inform a court and the defendants of the alleged violation and the claimed injury.[18] As the court of appeals noted,

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[17]The district court reasoned that:

> Their action seeks to vindicate the rights of third parties dispite [sic] their allegations of deprivation of benefits from interracial associations. Coleman and Willis assert no more than the general public interest. [App. 34]

[18]"[T]he Federal Rules of Civil Procedure do not require a claimant to set out in detail the facts upon which he bases his claim. To the contrary, all the Rules require is 'a short and plain statement of the claim' [citation omitted] that will give the defendant fair notice of what the plaintiff's claim is and the grounds upon which it rests." *Conley v. Gibson*, 355 U.S. 41, 47 (1957). In this case, Willis and Coleman alleged that the Richmond area, including Henrico County, has racially segregated housing patterns; that Havens' discriminatory racial steering practices in that county have created a dual housing market in Henrico County and contributed to the creation and maintenance of racially segregated housing patterns and inhibited the development of racially stable neighborhoods in the Richmond area; and that these actions have injured Willis and Coleman, who are residents of the affected area. (Complaint ¶¶ 7, 10, 14, 15, 17, 18; App. 13, 14, 17, 18).

"Coleman and Willis both claim deprivation of community rights in language at least as specific as approved [in *Trafficante* and *Bellwood*]" (App. 72).

In *Trafficante*, this Court recognized standing of two residents of a large apartment complex in San Francisco who alleged that the racial steering practices of the owner had confined them to living in a "white ghetto." *Id.* at 208. In *Bellwood*, this Court recognized standing of four individuals who resided within the area alleged to have been "targeted" by defendants for conversion from a stable integrated neighborhood to a racially segregated black neighborhood. The Court did not express an opinion as to whether residents outside the target area had standing because the complaint did not claim that they had been injured by the defendants' racial steering practices. *Bellwood, supra* at 111-15. In contrast to the complaint in *Bellwood*, the complaint in this case specifically alleged that Havens' discriminatory practices were distorting the housing market throughout the Richmond area.

Petitioners argue that the complaint failed to allege a sufficient causal nexus between the respondents' injury and Havens' acts because such acts "cannot reasonably be said to affect the entire Richmond Metropolitan Area" (Petitioners' Brief [hereinafter "Pet. Br."] 31). However, the affected area should not be defined by artificial boundaries, but rather determined "according to how one views his living environment." *Id.* at 113. In the view of officials with expert knowledge of such

matters, housing discrimination in one part of the Richmond community affects neighborhoods in other parts of the community.[19] *See* Brief of *amicus curiae* City of Richmond at 5, 15-16. This is a factual matter not determinable on the basis of pleadings alone.[20] Coleman and Willis should be allowed to prove, after an opportunity to conduct relevant discovery, that

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[19]Coleman and Willis both reside in moderate income neighborhoods in Richmond in the area north of the James River. The apartment complexes managed by Havens serve the same housing market as homes and apartments near the residences of Coleman and Willis. Richmond is a unified metropolitan area with a low vacancy rate that is significantly smaller than the Chicago metropolitan area involved in *Bellwood*. There are a limited number of neighborhoods in which residents can seek convenient, moderate income housing. The refusal of Havens and other landlords in certain areas of Richmond to make moderate income housing available to blacks has produced a sharp increase in the black population in other neighborhoods that serve the same market, such as that of Coleman and Willis.

Thus, unlike the cases relied upon by petitioners, *Linda R. S. v. Richard D.*, 410 U.S. 614 (1973), and *Warth v. Seldin*, 422 U.S. 490, 508 (1975), in which there was no connection whatsoever between the act complained of and the injury to the plaintiff, in this case Havens' steering practices are a contributing factor to the segregation which has deprived respondents of the benefits of interracial associations.

[20]For example, as mentioned above, the complaint in *Bellwood* alleged only that the plaintiffs resided in Cook County, Illinois. The "target area" in which defendant, Gladstone Realtors, was engaged in unlawful racial steering practices was described in a separate paragraph which made no reference to any of the *Bellwood* plaintiffs. Thus, the complaint in *Bellwood* described no "causal nexus" between the alleged injury to the plaintiffs and the defendant's racial steering practices. That "causal nexus" was provided by pre-trial discovery.

segregation in their neighborhoods is causally related to Havens' racial steering practices.

Havens also argues that by granting standing to Coleman and Willis, the court of appeals conferred standing on all residents of Richmond and Henrico County to sue for damages caused by defendants' discriminatory practices (Pet. Br. 30). Contrary to this contention, the court of appeals held only that the district court's dismissal of the complaint on the pleadings, without giving respondents an opportunity to develop the facts to support their allegation of injury, was improper. This Court has recognized that:

> Although standing generally is a matter dealt with at the earliest stages of litigation, usually on the pleadings, it sometimes remains to be seen whether the factual allegations of the complaint necessary for standing will be supported adequately by the evidence adduced at trial.

Bellwood, 441 U.S. at 115 n.31. The court of appeals' holding closely followed the guidance of this Court in *Bellwood* on this matter.[21]

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[21] In Part IV of its opinion, the court of appeals stated:

> The district court's dismissal prevented plaintiffs Coleman, Willis and HOME from proceeding to trial. Since allegations bearing on standing must be actualized by proof, the defendants may, on remand, contest these as any other facts. The complaint in the instant case does not specifically allege that the discrimination practiced at Colonial Courts and Camelot Townhouse Apartments affects the area where the testers reside. The district court may require the complaint

[footnote continued]

In light of the fact that respondents' complaints were filed (and dismissed by the district court) before this Court's decision in *Bellwood* clarified the facts that must be alleged to establish standing for loss of the benefits of interracial associations, it is particularly appropriate to permit respondents to present additional materials and, if necessary, amend their complaint.[22] In spite of this, the district court denied respondents' motion to reconsider.

In seeking to uphold the district court's dismissal of respondents' complaint, petitioners are asking this Court to reverse its consistent functional treatment of standing in fair housing cases. Petitioners in this case have sought to impose their own rigid geographical standard to describe the Richmond area affected by Havens' practices rather than allow respondents to demonstrate that racial discrimination in one part of the area can affect neighborhoods in other parts of the overall community.[23]

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to be amended for such allegation necessary to facilitate production of evidence bearing on this issue. If the allegations are not supported by proof at trial, the case may be terminated for lack of standing at an appropriate stage of the trial. [App. 78.]

[22]Petitioners' suggestion that respondents should have pleaded facts that tracked the *Bellwood* guidelines is, of course, an exercise in hindsight. If, however, petitioners would prefer to deal with such allegations, they, presumably, would not object to a determination that respondents be granted leave to amend their complaint.

[23]This should be contrasted with *Trafficante*, 409 U.S. 205 (1972), and *Bellwood*, where for the purpose of determining the standing of plaintiffs this Court accepted the relevant community to be the one alleged *by plaintiffs* to have been affected by the defendants' practices.

In *Trafficante* and *Bellwood*, this Court declined to adopt the sort of rigid geographical rule petitioners now urge the Court to accept. Geographic nexus is one factor in such determinations, but injury, not proximity, is the touchstone of standing. Respondents urge the Court to affirm the decision of the court of appeals and, with any guidance or special instructions this Court is willing to provide, to remand to the district court for further factual development of the claims in question.

B. Coleman Has Standing To Sue Because She Has Been Denied The Right To Obtain Unbiased Housing Information Secured By Section 804(d) Of The Fair Housing Act.

Coleman, a black woman, alleged that each time she requested information regarding rental housing, Havens gave her different information than it gave respondent Willis, a white man (Complaint ¶ 13; App. 16-17). On three occasions, Coleman was told that there were no vacancies in either Camelot Townhouses or Colonial Court, the two apartment complexes owned and operated by Havens, while Willis was informed of vacancies in both complexes. In response to a fourth inquiry, Havens informed Coleman that there was a vacancy at Colonial Court, the partially integrated apartment complex, but none at Camelot Townhouses, the all-white complex. On the same day, another white HOME employee was informed by Havens that there were vacancies in the Camelot complex.

On its face the complaint describes a claim that Havens represented to Coleman, because of her race, that Havens' apartments were not available for rental when, in

fact, they were so available. (Complaint ¶ 13; App. 16). This makes out a violation of section 804(d) of the Fair Housing Act.[24] Coleman alleged that she suffered "specific injury" as a result of these acts (Complaint ¶ 13; App. 16).

The district court dismissed Coleman's complaint because she was a "tester" rather than a "bona fide renter," stating that she "did not attempt in good faith to rent residential property from any defendant, but instead sought only to develop evidence for use in this lawsuit." (App. 34).[25] The court of appeals reversed, holding that the prohibition against providing false information in section 804(d) of the Fair Housing Act "creates a concomitant right to receive correct housing information without regard to race or color" and that plaintiff's status as a "tester" does not preclude her from bringing an action for a violation of her civil rights (App. 70-71).

This Court has consistently upheld the position taken by the court of appeals that a plaintiff's motive for "testing" conduct which violates his or her civil rights is

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[24] 42 U.S.C. § 3604 provides that:

> As made applicable by Section 3603 of this title and except as exempted by Sections 3603(b) and 3607 of this title, it shall be unlawful –
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> * * *
>
> (d) to represent to any person because of race, color, religion, sex, or national origin that any dwelling is not available for inspection, sale, or rental when such dwelling is in fact so available.

[25] However, in the following paragraph the district court stated: "[t]he gravamen of plaintiffs' complaint is that when black persons inquired as to vacancies, they were told that none existed. Under these circumstances, no affirmative offer to rent need be shown in order to state a claim." [App. 34.]

irrelevant to the question of standing. *Pierson v. Ray*, 386 U.S. 547, 558 (1967); *Evers v. Dwyer*, 358 U.S. 202, 204 (1958). *Accord, Grant v. Smith*, 574 F.2d 252 (5th Cir. 1978). What is significant is that such person's rights have been violated and an injury has been caused by the defendant. Coleman met the requirements for standing set down in *Warth v. Seldin*, 422 U.S. 490, 501 (1975): she alleged a violation of a right and a distinct injury to herself resulting from that violation. She should have been allowed to proceed to trial to prove the facts on which her claim was based.

Petitioners argue that Coleman was not injured by Havens' discrimination (Pet. Br. 25). This is a factual issue that should be decided at trial.[26] Petitioners' suggestion, however, that blacks who are lied to because of their race when they seek housing information suffer no personal injury or insult contradicts the congressional intent behind the Fair Housing Act—and makes painfully clear the continuing need for courts to safeguard these personal rights. The legislative history of the Fair Housing Act shows Congress' intent to eliminate "the opportunity to insult and discriminate against a fellow American because of his color." 114 *Cong. Rec.* 5643

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[26]Havens' biased treatment of Coleman was no different from the way Havens treated Paul Coles. In his Findings of Fact following the trial of Coles' racial discrimination claim against Havens, the district judge concluded that it was reasonable to infer from such circumstances that a victim of Havens' discrimination could reasonably have been outraged at such treatment:

> Indeed, I can imagine that he [Coles] was mad when he learned that he had been discriminated against because of his race, contrary to the laws of the land and contrary to decency. How does one put a price on being hurt and mad?

Findings of Fact, n.7, *supra*. *Accord, Gore v. Turner*, 563 F.2d 159, 164 (5th Cir. 1977); *Seaton v. Sky Realty Co.*, 491 F.2d 631, 634 (7th Cir. 1974).

(1968).[27] This Court, like Congress, has recognized that the embarrassment, insult and humiliation individuals suffer when they are the victims of overt racist actions constitute legally cognizable injuries. In *Curtis v. Loether*, 415 U.S. 189 (1974), a case which also arose under section 812 of the Fair Housing Act, this Court drew an analogy between racial discrimination and the tort of intentional infliction of emotional harm:

> An action to redress racial discrimination may also be likened to an action for defamation or intentional infliction of mental distress. Indeed, the contours of the latter tort are still developing, and it has been suggested that "under the logic of the common law development of a law of insult and indignity, racial discrimination might be treated as a dignitary tort." C. Gregory and H. Kalven, Cases and Materials on Torts 961 (2d Ed. 1969).

Id. at 195 n.10.

In short, Coleman's complaint asserts a legally cognizable claim resulting from Havens' discriminatory treatment of her in violation of section 804(d) of the Fair Housing Act. At trial, the specific facts of the case in question would have established the extent of her personal injury. The fact that she performed "testing" as part of her activities as a HOME employee does not disqualify her from bringing her claim of injury. As this Court held in *Pierson* and *Evers*, her motive is irrelevant to the question of standing.

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[27]Senator Hart emphasized the need for flexible remedies "to redress specific wrongs aimed at [blacks] because of the color of their skin." 114 *Cong. Rec.* 5514-15 (1968).

III.

PLAINTIFF-RESPONDENT HOME HAS STANDING UNDER THE FAIR HOUSING ACT BECAUSE IT HAS ALLEGED INJURY TO ITSELF AND TO ITS MEMBERS AS A RESULT OF HAVENS' UNLAWFUL RACIAL STEERING PRACTICES.

HOME alleged that it is a nonprofit corporation with a multiracial membership of 600 individuals whose purpose is "to make equal opportunity in housing a reality in the Richmond Metropolitan Area." (Complaint ¶ 8; App. 13). To achieve this purpose, HOME engages in various specific programs in the Richmond area. HOME alleged that it:

> has been frustrated by defendants' racial steering practices in its efforts to assist equal access to housing through counseling and other referral services. Plaintiff HOME has had to devote significant resources to identify and counteract the defendants' racially discriminatory steering practices. HOME members have, as a result of defendants' practices, been deprived of the right to the important social, professional, business and economic, political and aesthetic benefits of interracial associations that arise from living in integrated communities free from discriminatory housing practices. . . .

(Complaint ¶ 16; App. 17-18).

In addition to declaratory and injunctive relief, HOME requested "expenses of testing and monitoring defendants' practices and its expenses pursuant to this litigation." (Complaint ¶ 18(f); App. 20).

The district court dismissed HOME's complaint, stating that "the law is clear that HOME is not a proper party to this action and cannot be accorded any relief by this Court", citing *Warth v. Seldin*, 422 U.S. 490 (1975), and *TOPIC v. Circle Realty*, 532 F.2d 1273

(9th Cir.), *cert. denied*, 429 U.S. 859 (1976). The court did not discuss the law in those cases or apply it to the allegations of HOME's complaint. The Court of Appeals for the Fourth Circuit reversed, holding that HOME had standing to sue on its own behalf and on behalf of its members (App. 75-76).

"There is no question that an association may have standing in its own right to seek judicial relief from injury to itself and to vindicate whatever rights and immunities the association itself may enjoy," or that "an association may have standing, solely as the representative of its members." *Warth, supra* at 511. HOME has standing in the present action in both respects. HOME's allegations regarding its activities indicate that its interest in the controversy is more than an abstract concern with the issue of fair housing. *Simon v. Eastern Kentucky Welfare Rights Organization*, 426 U.S. 26, 40 (1976); *Sierra Club v. Morton*, 405 U.S. 727, 739 (1972). By alleging injury to its own operations and to its members' enjoyment of interracial associations, HOME has "'alleged such a personal stake in the outcome of the controversy' as to warrant [*its*] invocation of federal court jurisdiction and to justify exercise of the court's remedial powers on [its] behalf." *Warth, supra* at 498-499, *quoting Baker v. Carr*, 369 U.S. 186, 204 (1962) (emphasis in original).

A. HOME Has Standing Under The Fair Housing Act Because It Alleged A Distinct Injury To Itself, Resulting From Havens' Racial Steering Practices.

HOME is a counseling agency for low and moderate income families which has been in existence in Richmond since 1971. HOME has been under contract with the

City of Richmond to operate a low-cost rental housing locator service. The performance standards of the 1977-78 contract required HOME to identify at least 30 low-cost housing vacancies per month within the Richmond Standard Metropolitan Statistical Area and to provide counseling services to a minimum of 600 Richmond area residents during the year. In reports to the U.S. Department of Housing and Urban Development, jointly prepared by HOME and the City of Richmond, the extensive counseling and locator services provided by HOME during 1978 and 1979 are fully documented.[28] In addition to advising clients, HOME publishes a "Renter's Guide" listing 44,000 apartments in the Richmond area, contracts with companies in the area to provide housing information to their employees,[29] disseminates housing information to public agencies, churches and schools, and publicizes through the various news media and educational seminars the principles of fair housing.[30] These activities amply demonstrate that HOME is not an "ideological plaintiff" with only an abstract concern with housing discrimination" (Pet. Br.

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[28]The reports show that, during 1978, HOME counseled approximately 100 persons each month, 87% of whom were minorities and 63% of whom were able to find housing in integrated neighborhoods. In 1979, HOME provided assistance to 1206 individuals and families.

[29]Best Products Co., C&P Telephone Co., Reynolds Metals Co., United Virginia Bankshares, Inc., Wards Co., Inc.

[30]These are specific examples of the allegations in the complaint describing HOME's activities. Many of these facts were not part of the record before the district court due to the dismissal of HOME's claim. The existence of HOME's contract with the City, however, is a matter of public record, contained in Richmond City Council Ordinance No. 77-58-69. *See* Brief of *amicus curiae* City of Richmond.

21-22). The City of Richmond, recognizing that the city itself is harmed by racial discrimination in housing,[31] entered into a contract with HOME for the purpose of providing services to Richmond residents to counteract and compensate for the discriminatory practices of landlords and realtors. In this respect, HOME became the agent of the City of Richmond for fair housing matters. *See* Brief of *amicus curiae* City of Richmond.

Petitioners rely on cases in which the result has been the denial of standing to the plaintiff organizations. (Pet. Br. 18-22). The courts' analysis in those cases, however, leads to a contrary conclusion when applied to the functional characteristics of HOME. In *Sierra Club v. Morton,* 405 U.S. 727 (1972), a plaintiff organization devoted to advancing a generalized issue of national interest and scope was denied standing. The Sierra Club expressly disavowed any allegation of injury to the organization itself, claiming only a special interest in the conservation and sound maintenance of the national parks and the Sierra Nevada Mountains. *Id.* at 737 n.8. Nor did the Sierra Club allege that any of its members was injured. HOME, on the other hand, has alleged injury to itself and to its members. (Complaint ¶ 16; App. 17-18).

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[31] In *Bellwood,* 441 U.S. 91 (1979), this Court noted several injuries to a municipality as a result of racial steering: diminution of the tax base, hampering the municipality's "ability to bear the cost of local government and to provide services," *id.* at 110-11, and linkage between housing segregation and school segregation. *Id.* at 111 n.24.

Similarly, in the court of appeals' decision in *Village of Bellwood v. Gladstone Realtors*, 569 F.2d 1013 (7th Cir. 1978), *aff'd on other grounds, Gladstone, Realtors v. Village of Bellwood*, 441 U.S. 91 (1979),[32] the plaintiff organization, the Leadership Council for Metropolitan Open Communities, was held not to have standing because of its generalized interest in fair housing. The Leadership Council is an umbrella organization composed of fair housing organizations, some of which are similar to HOME. The Leadership Council's activities did not include the provision of counseling or information services to individual renters or home buyers. *See* Brief of *amicus curiae* Leadership Council for Metropolitan Open Communities. The Leadership Council's complaint alleged only that it was a "not-for-profit corporation charged with providing for equal opportunity in housing and the elimination of discrimination in the six-county Chicago metropolitan area." (*Bellwood*, Joint App. 4). Thus, its allegation of interference with its work and purpose as a result of defendants' racial steering was no more specific than the Sierra Club's allegation that its general interests were aggrieved. HOME, on the other hand, has alleged that it is a service organization whose counseling and referral activities were impaired by Havens' discriminatory practices (Complaint ¶¶ 8, 16; App. 13-14, 17-18).[33] When an organization has alleged injury to itself and has a personal stake in the outcome of a controversy, it has standing to bring suit on its own behalf. *Village of Arlington Heights v. Metropolitan*

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[32]The claim of injury to the plaintiff organization was not before the Supreme Court in *Bellwood*.

[33]Petitioners also cite *Mulqueeny v. National Comm'n on the Observance of International Women's Year, 1975*, 549 F.2d 1115, 1121 (7th Cir. 1977), and *City of Chicago Heights v. Arquilla-DeHaan Realtors, Inc.*, No. 77-C-3305 (N.D. Ill., May 21, 1980),

[footnote continued]

Housing Development Corp., 429 U.S. 252, 261-62 (1977).

Havens' practice of racial steering has caused injury to HOME. Havens willfully violated section 804(d) of the Fair Housing Act, which makes it unlawful to provide racially biased housing information "to any person." 42 U.S.C. § 3604(d). As a "person" under the Act within the meaning of section 802(d), HOME had a right to receive accurate information about housing availability. *McDonald v. Verble*, 622 F.2d 1227, 1233 (6th Cir. 1980); *United States v. Long*, Eq. Opp. Hsg. Rptr. (P-H) ¶ 13,631 at 41,091 (D.S.C. 1972), *modified as to relief and aff'd*, Eq. Opp. Hsg. Rptr. (P-H) ¶ 13,733 (4th Cir. 1974); *United States v. Reddoch*, Eq. Opp. Hsg. Rptr. (P-H) ¶ 13,569 at 13,777 (S.D. Ala. 1972). The violation of this right, without more, caused HOME to suffer a legal injury, since "Congress may create a statutory right or entitlement the alleged deprivation of which can confer standing to sue even where the plaintiff would have suffered no judicially cognizable injury in the absence of statute." *Warth v. Seldin*, 422 U.S. at 514.

However, HOME has suffered not only legal injury but also actual injury. Havens' illegal racial steering practices undermined HOME's ability to perform its normal and lawful activities of counseling and locating housing for

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in support of their contention that HOME is nothing more than a "concerned bystander." *United States v. SCRAP*, 412 U.S. 669, 687 (1973). However, these cases do not support petitioners' case. In *Mulqueeny*, the plaintiffs were not engaged in the provision of direct services as is HOME, but simply participated in a political controversy. In *Chicago Heights*, a nonprofit corporation sought redress of social and economic injury to its members, and not to the organization itself.

low and moderate income homeseekers. Havens also interfered with HOME's ability to perform its contractual obligations to private companies, to meet the stated performance standards in its contract with the City of Richmond and to provide effective services to black clients who sought HOME's counseling services.[34] In order to compensate for the misinformation it received from Havens, HOME was forced to employ its white staff in duplicative efforts in order to determine whether the information given by Havens to HOME's black staff was accurate and complete. In its request for expenses of testing and monitoring Havens' practices (Complaint ¶ 18(e); App. 20), HOME seeks compensation for funds diverted from its operating budget for counseling activities, not for funds spent in furthering its general interest in fair housing.

In order to accord standing, however, HOME's injury need not be translated solely into economic terms. It has long been clear that economic injury is not the only kind of injury that can support a plaintiff's standing. *United States v. SCRAP*, 412 U.S. 669, 686-87 (1973); *Sierra Club v. Morton*, 405 U.S. 727, 734 (1972); *Ass'n of Data Processing Service Organizations, Inc. v. Camp*, 397 U.S. 150, 154 (1970). HOME's specific project of providing counseling to homeseekers, "whether or not it will generate profits, provides that 'essential dimension of specificity' that informs judicial decision-making." *Village of Arlington Heights v. Metropolitan Housing*

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[34]HOME's injury in this regard can be analogized to an injury resulting from tortious interference with contractual relations. *See generally Blockman v. Sandalwood Apartments*, 613 F.2d 169, 171 (7th Cir. 1980); Restatement (Second) of Torts § 766A (1979) (cause of action exists where performance under contract is made more burdensome as a result of defendants' acts).

Development Corp., 429 U.S. at 263, *citing Schlesinger v. Reservists to Stop the War*, 418 U.S. 208, 221 (1974).

This Court has never considered an organization's standing to sue on its own behalf under the Fair Housing Act. Other courts, however, have accorded standing to organizations like HOME or indicated that such a finding would be appropriate, recognizing that standing for an organization seeking redress of its own injury depends on the nature of the organization's activities and not on financial loss.

In *Heights Community Congress v. Hilltop Realty, Inc.*, No. C-79-422 (N.D. Ohio, Dec. 31, 1980), the court found that in contrast to the Leadership Council's general interest in fair housing in *Bellwood*, the Heights Community Congress had standing by virtue of its contractual relationship and joint efforts with the City of Cleveland Heights. The Heights Community Congress, pursuant to these contracts, conducted audits of housing availability and performed escorting services for prospective residents (Supplement to Petition for Writ of Certiorari at 18). HOME not only performed similar services for the City of Richmond, but in addition had the contractual obligation to meet stated performance standards for rental housing placement and counseling.

In *Huertas v. East River Housing Corp.*, 81 F.R.D. 641 (S.D.N.Y. 1979), the court had before it a motion to dismiss two community organizations seeking to maintain a fair housing action. One of the plaintiff organizations was a nonprofit corporation established for the purpose of assisting low income persons in locating housing through, among other activities, advertising housing availability and counseling housing applicants on rental procedures. *Id.* at 644. The court granted standing to the organizations based on representation of

their members, but noted the impact of an organization's activities on standing to sue on its own behalf under the guidelines set forth in *Sierra Club*:

> The existence of a "financial nexus" between the wrong alleged and harm to the organization is certainly sufficient to create standing .... But such a nexus surely cannot be a necessary prerequisite. In the context of the instant case, *there is no doubt that the organizational plaintiffs would have standing if they acted as paid referral agencies for low-income apartment seekers and lost profits because of racial discrimination in housing. The fact that the organizations provide identical services but do so without charge should not affect their claim to standing.* The touchstone should not be remuneration, then, but rather the nature of the organization's function. If it merely monitors and perhaps publicizes a problem, it suffers no injury in fact when the problem worsens. *If, however, the organization takes an active role in combating a social ill, by, for example, the provision of services to clients, it may suffer injury in fact when relevant laws are violated, regardless of whether the organization is motivated by the desire for profit or by social conscience.*

Id. at 652-53 n.16 (emphasis added).

Like the organizational plaintiff in *Huertas*, HOME's active operations suffered injury in fact when its counseling services were hampered by Havens' racial steering practices. HOME has alleged that Havens frustrated HOME's activities in assisting homeseekers through counseling and other referral services (Complaint ¶ 16; App. 17).

In short, HOME is asserting both its own legal right under the Act to receive accurate information regarding

the availability of rental housing and, in accordance with the broad standing powers conferred by the Fair Housing Act, the legal rights of the City of Richmond and of HOME's clients. But the injury which HOME seeks to redress is its own: the frustration of HOME's counseling activities and interference with HOME's efforts to provide the services that it has contracted to perform. Any other reading of the standing requirements of article III in conjunction with the Fair Housing Act would eviscerate the enforcement mechanisms intended by Congress.

B. HOME Has Standing As A Representative Of Its Members Who Are Alleged To Have Been Injured As A Result Of Havens' Racial Steering Practices.

The court of appeals held that HOME has standing under the Fair Housing Act as a representative of its members (App. 75-76).[35] It is now well established that an organization has standing to sue on behalf of its members when "(a) its members would otherwise have standing to sue in their own right; (b) the interests it seeks to protect are germane to the organization's purpose; and (c) neither the claim asserted, nor the relief requested, requires the participation of individual members in the lawsuit." *Hunt v. Washington State Apple Advertising Comm'n*, 432 U.S. 333, 343 (1977). HOME fully meets this three-part test.

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[35]As discussed in n.8 *supra*, the Court may not need to reach this issue.

The first component of the test is met in this case because HOME members have standing to sue on their own behalf. The complaint identifies HOME as a nonprofit organization with a multiracial membership of 600 individuals whose purpose is "to make equal opportunity in housing a reality in the Richmond Metropolitan Area." The complaint further alleges that "HOME members have, as a result of defendants' practices, been deprived of the right to the important social, professional, business and economic, political and aesthetic benefits of interracial associations that arise from living in integrated communities free from discriminatory housing practices" (Complaint ¶ 16; App. 17-18), a cognizable injury under the Fair Housing Act. *See Trafficante*, 409 U.S. at 210; *Bellwood*, 441 U.S. at 112. In the procedural posture of this case, it is too early to contend, as Havens does (Pet. Br. 13-14), that these allegations are insufficient to establish the causal nexus that serves as a basis for HOME's representational standing.[36]

To meet the first part of the *Hunt* test for representational standing, only one member of an organization need suffer injury. *Warth v. Seldin*, 422 U.S. at 511. The complaint in this case alleged injury to HOME members. The dismissal by the district court, however, prevented a determination of the number and identity of HOME members so injured.[37] These facts are

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[36] *See* the discussion *supra* at 19-26 on the claims of Willis and Coleman based on their deprivation of the benefits of interracial associations.

[37] In fact, at the time that the complaint was filed in the present action, one HOME member was a resident of Camelot Townhouses and nine others resided within the two census tracts in which Camelot Townhouses and Colonial Court are located. Numerous

[footnote continued]

appropriately developed in discovery and at trial.[38] Since the complaint in this case indicated that HOME members in the Richmond area have suffered injury as a result of Havens' practices, the first part of the *Hunt* test is met.

The second part of the *Hunt* test is easily met in this case: the interests of HOME members that HOME seeks to protect are virtually identical to HOME's stated purposes. As the representative of its members, HOME is protecting the rights of its members to enjoy the benefits of living in integrated communities.[39] This is clearly germane to HOME's goal of securing "the elimination of unlawful racially discriminatory housing practices that cause injury to its members . . . and . . . [of assuring] to all such persons the right to the important social, professional, business, economic and political benefits of interracial associations that arise from living in integrated communities." (Complaint ¶ 8; App. 13).

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others lived in neighborhoods which are part of the same housing market as Havens' apartments and, hence, were affected by Havens' discriminatory practices.

[38]*See Sherman Park Community Ass'n v. Wauwatosa Realty Co.*, 486 F. Supp. 838, 842 (E.D. Wisc. 1980) (standing granted to members residing within service area identified subsequent to complaint in interrogatories); *Huertas v. East River Housing Corp.*, 81 F.R.D. 641, 648-49 (S.D.N.Y. 1979) (representational standing granted on basis of affidavits of members claiming discriminatory denial of opportunity to buy housing); *Fair Housing Council, Inc. v. Eastern Bergen County Multiple Listing Service, Inc.*, 422 F. Supp. 1071, 1074-75 (D.N.J. 1976) (representational standing granted based on allegation that defendants' pervasive steering policies had caused racial segregation throughout Bergen County; number of members residing in Bergen County not specified).

[39]Thus, there is no "double *jus tertii*" as petitioners contend (Pet. Br. 17) since, for purposes of representational standing, HOME stands in the shoes of its members.

HOME also satisfies the third criterion of representational standing in that the participation of individual members is not essential to the lawsuit. HOME is not seeking damages for its members,[40] a remedy which would require proof as to the fact and extent of injury to each member.[41] *Warth*, 422 U.S. at 515-16. Rather, since HOME is seeking injunctive relief, "it can reasonably be supposed that the remedy, if granted, will insure to the benefit of those members of the association actually injured." *Id.* at 515.

HOME's complaint alleges that cognizable interests of HOME members have been injured by Havens' racial steering practices. The law is well settled that an organization like HOME can bring suit on behalf of its members.

IV.

PLAINTIFFS-RESPONDENTS' CLAIMS UNDER THE FAIR HOUSING ACT WERE TIMELY FILED.

The complaint alleged that Havens had a policy and practice of racial steering, as evidenced by incidents occurring on March 14, March 21, March 23, July 6 and July 13, 1978 (Complaint ¶¶ 12, 13; App. 15-16). The district court held that all claims except the one based on the last incident were time-barred under the Fair Housing Act.[42]

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[40]The damages HOME requests are to compensate its own injury and not to redress injury to specific individual members. (Complaint ¶ 18(f); App. 20).

[41]The court of appeals limited HOME's representational standing to exclude "individual [member] claims for damages where both the fact and extent of injury would require individualized proof." (App. 75 n.4).

[42]The district court held that none of the claims were time-barred under § 1982 (App. 33). Thus, even if this Court were to

[footnote continued]

The court of appeals, reversing the decision of the district court, held that none of the claims in the complaint was time-barred under the Fair Housing Act because the acts of discrimination alleged a "continued relationship" and a "continued violation" which extended into the 180-day statute of limitations period of the Act. (App. 81).

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decide that the claims are time-barred under the Fair Housing Act, this action would be cognizable under § 1982. The court of appeals did not need to reach the issue of plaintiffs' standing under § 1982 (App. 64). Therefore, it would be appropriate, if necessary, to remand this issue to the court of appeals. The law is clear, however, that § 1982 is violated when a person's ability to buy, sell or lease property turns on race. *Jones v. Alfred H. Mayer Co.*, 392 U.S. 409 (1968). A claim of injury resulting from racial steering practices is cognizable under § 1982, *Denny v. Hutchinson Sales Corp.*, 649 F.2d 816, 819-20 (10th Cir. 1981), *Moore v. Townsend*, 525 F.2d 482, 485 (7th Cir. 1975), consistent with the fundamental principle that blacks are entitled to "the same right . . . enjoyed by white citizens." *See Sullivan v. Little Hunting Park*, 396 U.S. 229, 238-239 (1969). Standing under § 1982 has been granted to black renters and to white homeowners who are injured in their use of property, as well as to a black person seeking information about buying a home notwithstanding the fact that that person was not actually trying to buy a home. *Meyers v. Pennypack Woods Home Ownership Ass'n*, 559 F.2d 894, 898 (3d Cir. 1977). Hence, Coleman who, because of her race, was given misinformation about the availability of rental housing in Havens' apartments, has a cognizable claim under § 1982 as well as under the Fair Housing Act. Coleman and Willis, who are residents of the housing market affected by Havens' racial steering practices and who have been injured by Havens' discriminatory acts, have standing to bring suit under § 1982. *Meyers, supra*; *Denny v. Hutchinson Sales Corp.*, 649 F.2d 816 (10th Cir. 1981). HOME, as a representative of its members who have been injured by Havens' practices, also has standing to bring suit under § 1982. *Park View Heights Corp. v. City of Black Jack*, 467 F.2d 1208, 1214 (8th Cir. 1972); *Huertas v. East River Housing Corp.*, 81 F.R.D. 641, 650 (S.D.N.Y. 1979).

Under the Fair Housing Act, "a civil action shall be commenced within one hundred and eighty days after the alleged discriminatory housing *practice* occurred." 42 U.S.C. § 3612(a) (emphasis added). The practice complained of here by respondents is racial steering, whereby information regarding the availability of rental housing is misrepresented depending upon the race of the applicant.

It is important to emphasize that respondents do not maintain that their suit is timely because the *effects* of acts occurring outside the 180-day period continued into the limitations period. Rather, respondents allege that the practice itself, the illegal policy of racial steering carried out by Havens, continued into the 180-day limitations period. Thus, petitioners' reliance on cases such as *United Airlines, Inc. v. Evans*, 431 U.S. 553 (1977), is misplaced. *Evans* held only that the continuation of effects of a past discriminatory act into the limitations period would not toll the statute of limitations. *Id.* at 558. Here, respondents clearly alleged that Havens maintained a policy of discrimination that was in full operation at least as of the July 13, 1978 incident involving plaintiff Coles.[43]

The other decisions relied upon by petitioners, *Meyers v. Pennypack Woods Home Ownership Ass'n*, 559 F.2d 894 (3d Cir. 1977), and *Stingley v. City of Lincoln Park*, 429 F. Supp. 1379 (E.D. Mich. 1977), also are inapplicable to this case because those actions were brought by individuals who were victims of only a single discriminatory act. Indeed, contrary to the implication created by petitioners' incomplete quotation from *Meyers*,[44] the Court of Appeals for the Third Circuit

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[43]The district court found that Havens indeed had adopted such a policy. *See* Findings of Fact, Appendix A at 2a.

[44]Pet. Br. 39.

there distinguished cases which "were class actions involving alleged patterns and practices of discrimination continuing to affect all members of the plaintiff class [from] the instant case [which] concerns a discrete act of alleged discrimination against the individual plaintiff." 559 F.2d at 899. In the class action cases alleging a practice of forbidden discrimination, an allegation identical to the one asserted by respondents in this case, the courts have consistently held that a continuing violation theory is appropriate.

Thus, several courts have held that as long as one act in a series of incidents evidencing a pattern or practice of discrimination occurs within the limitations period, a claim based on all the acts may be maintained. *Baker v. F&F Investment Co.*, 420 F.2d 1191, 1200 (7th Cir.), *cert. denied*, 400 U.S. 821 (1970); *Fair Housing Council, Inc. v. Eastern Bergen County Multiple Listing Services, Inc.*, 422 F. Supp. 1071, 1076 (D.N.J. 1976). Indeed, in *City of Chicago Heights v. Arquilla-DeHaan Realtors, Inc.*, No. 77-C-3305 (N.D. Ill., May 21, 1980), the complaint was filed more than 180 days after the alleged discrimination against the bona fide purchaser but within 180 days after the incidents involving testers. Although the trial court originally dismissed the claims as untimely, it vacated its initial order and found that all claims, including those of the bona fide plaintiff, were timely because the racial steering practices of the defendants were alleged to have continued into the 180-day limitations period, as evidenced by the tests conducted by the neighborhood association. Similarly, the claims of Willis and Coleman in the instant case were timely since they resulted from Havens' practice of racial steering which, as Coles' claim of July 13 shows, continued into the limitations period.

Most cases using a continuing violation theory to interpret a statute of limitations have arisen under the employment discrimination provisions of Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e *et seq.* Without exception, courts of appeals have made it clear that, when a defendant engages in a continuing course of discrimination against an entire class, the statute of limitations is tolled by any of these wrongful acts. In these cases, all the acts which make up a defendant's discriminatory practice are within the scope of the suit, including specific instances which, if not part of an overall practice, would otherwise be time-barred.[45]

The continuing violation theory has been applied also to cases under the fair housing laws. For example, in *Concerned Tenants Ass'n of Indian Trails Apartments v. Indian Trails Apartments,* 496 F. Supp. 522 (N.D. Ill. 1980), the plaintiffs brought an action for discrimination on the basis of race in the terms and conditions of tenancies and in providing services and facilities to the plaintiffs. Defendants argued that some of the activities extended back to 1975 and could not be part of the suit which was filed in 1979. The district court rejected the defendants' argument stating:

> If the continuing violation theory is a viable one here, then the complaint was filed in a timely manner. . . . [T]he concept was discussed in relation

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[45] *E.g., Ass'n Against Discrimination in Employment v. City of Bridgeport,* 647 F.2d 256, 274-75 (2d Cir. 1981); *Gonzalez v. Firestone Tire & Rubber Co.,* 610 F.2d 241, 249 (5th Cir. 1980); *Cedeck v. Hamiltonian Federal Savings & Loan Ass'n,* 551 F.2d 1136, 1137 (8th Cir. 1977); *Macklin v. Spector Freight Systems, Inc.,* 478 F.2d 979, 987 (D.C. Cir. 1973); *Cox v. United States Gypsum Co.,* 409 F.2d 289, 290-91 (7th Cir. 1969).

> to Title VIII in *Meyers v. Pennypack Woods Home Ownership Ass'n*, 559 F.2d 894, 899 (3rd Cir. 1977). Although under the facts of that case no continuing violation was found, the court implied that under certain circumstances such a violation could be found. The Title VII cases where continuing violations have been found involved alleged patterns and practices of discrimination continuing to affect all members of the plaintiff class whereas the *Meyers* case concerned a discreet act of alleged discrimination against the individual plaintiff. In this case, the alleged actions of the defendants amounted to a pattern of failing to provide the same kind of services at the project as were afforded white tenants in the early 1970's. These actions allegedly occurred from sometime in the mid-1970's up to the time the consent decree was entered. This appears then to be a classic example of a complaint alleging a continuing violation of 42 U.S.C. § 3604(b), and thus the action was filed within 180 days of the alleged discriminatory housing practice.

496 F. Supp. at 526. Similarly, the incidents set forth in plaintiffs' complaint in this case are part of the continuing practice of Havens in discriminating against the plaintiff class and were timely filed.

Havens argues that the incidents alleged in the complaint were "discrete acts" rather than part of a discriminatory "practice." The court of appeals below, however, dismissed such argument as simplistic, noting that it is the petitioners' behavior over a period of time which is at issue:

> There is an appealing simplicity equating "occurrence" to a discrete act. Not simple, however, are the social ills targeted by Congress nor the actions of putative landlords. It is not isolated instances

> of discrimination that are the primary focus of the statute—rather it is a generalized practice of housing discrimination. [App. 79]

Havens' contends that since the Fair Housing Act defines a discriminatory "practice" as an "act" that is unlawful under the Act's substantive provisions,[46] the 180-day limitations period begins to run with the first act of discrimination. Petitioners' argument ignores the nature of the violation charged. A policy of racial steering, the wrong alleged by respondents here, violates the Fair Housing Act. *Zuch v. Hussey*, 394 F. Supp. 1028, 1047 (E.D. Mich. 1975), *aff'd and remanded*, 547 F.2d 1168 (6th Cir. 1977). This is an invidious practice of discrimination which, in order to succeed, must be practiced on all prospective tenants—black or white—with whom the realtor comes in contact, rather than against one individual. Before an action is brought alleging a policy of racial steering, it must be determined whether a defendant has performed and is continuing to perform acts of racial discrimination.[47]

The nature of a policy of racial steering is such that the preparation of a valid cause of action necessitates the accumulation of evidence over a period of time. Petitioners' position suggests that as soon as one instance

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[46] 42 U.S.C. § 3602(f).

[47] Petitioners also argue that, under the Act, *only* the Attorney General may bring an action challenging a "pattern or practice" in violation of the Act. Such a reading of the Act misplaces the emphasis of § 813 which grants limited enforcement rights to the government. Under § 813, the only suits the Attorney General may bring are pattern and practice cases. But nothing in § 813, so limiting the Attorney General, limits the enforcement rights of private parties to bring suit under § 812, the section under which respondents initiated this action.

of discrimination becomes apparent a plaintiff should immediately allege a pattern of racial discrimination. In order to assure that an action is not frivolous, verification of the complaint, testing, documentation and analysis must be performed, all of which take time. If this Court were to rule that the earlier incidents which took place outside the 180-day limitations period of the Act are barred even though the practice of which they are a part continued into the limitations period, the result would be to frustrate the initiation of valid racial steering claims and encourage the institution of hurried and unsubstantiated claims.

CONCLUSION

Petitioners have proposed the application of untenable limitations on the strong private enforcement intended by Congress in the Fair Housing Act. Respondents Coleman, Willis and HOME, on the other hand, have made claims of injury that this Court has held to be cognizable under the Fair Housing Act. Denial of respondents' right to press their claims would be a retreat from this Court's prior decisions in fair housing cases and a setback to the stated objectives of the Fair Housing Act.

The district court erroneously dismissed the respondents' complaint, relying on an incorrect rule of law. In reversing, the court of appeals corrected this error and remanded the case for further development of the factual record, consistent with this Court's guidance concerning the requirements for making standing determinations in fair housing cases.

The judgment of the Court of Appeals for the Fourth Circuit should be affirmed.

Respectfully submitted,

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September 9, 1981

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APPENDIX

APPENDIX A

FINDINGS OF FACT

IN THE
UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Richmond Division

Civil Action No. 79-0024-R

PAUL ALLEN COLES,
Plaintiff,

v.

HAVENS REALTY CORPORATION
and
ROSE JONES,
Defendants.

FINDINGS OF FACT

Richmond, Virginia
June 23, 1980

BEFORE: HONORABLE D. DORTCH WARRINER
United States District Judge

APPEARANCES: McSWEENEY AND STUTTS
By: James F. Stutts, Esquire
Counsel for Plaintiff

HIRSCHLER, FLEISCHER, WEINBERG & COX
By: Richard W. Hogan, Esquire
Counsel for Defendants

THE COURT: The Court finds all of the uncontroverted facts as set forth in the final pretrial order, and the Court also finds all of the facts set forth in the proposed findings of fact and admitted by the opposing party.

In addition to that, the Court finds that Havens Realty established a policy of discrimination against black people in the rental of its apartments. This was a policy which was intended to discourage the rental of apartments to blacks. It took the form of being unreceptive to black persons who sought to rent, giving them misinformation or grudgingly giving them correct information, being meticulous in scrutinizing their applications to see if there would be an excuse for turning them down within the guidelines set forth for rental and in general making it more difficult for a black applicant to be successful than a white applicant. This was a conscious and deliberate policy on the part of Havens Realty, and it was carried out under the direction of Mr. Arthur Havens, Mr. Welch, by Miss Ferrell, and Miss Jones.

The effect of this discriminatory policy was to violate the provisions of the Fair Housing Act and to violate the provisions of the Civil Rights Act of 1866.

The Court reaches this determination largely on the basis of the testimony of Miss Ferrell. It is true that there are classic reasons for Miss Ferrell to have lied. She was a disgruntled former employee, fired for letting her personal life interfere with the conduct of the business of Havens Realty. The Court has taken that into account.

The Court has also taken into account the fact that Miss Jones has also some classic reasons to not tell the truth. Miss Jones is an employee of Havens Realty. She is presently such an employee. She earns a reasonably good salary. She has an apartment that she lives in. She has been favored by her employer with a good job, and so she has a good reason not to tell the truth. I say "a good reason". She has a classic reason. There is never a good reason for not telling the truth.

The same, of course, is true of Mr. Welch and Mr. Havens. They stand accused in this case. They know that they may be liable for a substantial sum of money and also disapprobation in the community that they would in this year of our Lord nineteen hundred and eighty still be persisting in racial discrimination in housing, when this nation through every organ that it has, Legislative, Executive, and Judicial, has made it clear that discrimination in housing and discrimination in all of its aspects based on race cease. The nation has made it clear that it shall cease, though it costs people money. The nation has made it clear that it will cease though occupancy may fall below 80 percent. The nation has made it clear that the price must be paid to end discrimination in housing on the basis of race.

I recognize that when I make a judgment on the preponderance of the evidence that there could be left a substantial amount of doubt, far more than a reasonable doubt, that I'm correct. I may be wrong. It may be that Miss Ferrell has a twisted soul that thirsts after all these months to come into court and make things difficult for Miss Jones, and Mr. Havens, and Mr. Welch. But I have to determine whether that is more likely so than not. And I have weighed all of the evidence, observed the witnesses on the witness stand,

considered what each has at stake in this case, how each happened to be here to testify, and I have simply concluded that it's more likely than not that Miss Ferrell was telling the truth.

I am constrained to say a word or two about HOME. I'm disappointed. I think that one of the hallmarks of a group attempting to correct an evil is, or should be, utter fairness and objectivity. I don't believe the system that was set up, and the uses that were made of it, the instructions that were given, and methods that were adopted can be classified as fair. I can say that the result would be almost preordained by the method selected and the actual practice to which those methods were put. And it is a shame, too, when one considers the noble goal, to observe the not so noble methods.

Now, in the case of Mr. Coles, the named plaintiff, the Court doesn't believe that Mr. Coles said, "What about August, September, or October". The only way that Mr. Coles had of remembering that he did was the fact that he remembered that he did in other cases and that he would have been as well satisfied were it August, September, or October. If he can remember that he did it in other cases a few days before and a few days after, perhaps on the very day that he went to Havens, the question arises, "Why couldn't he remember that he did it at Havens?" When he was asked to record, at a time when the events were fresh in his mind, the significant facts that happened and when he was being questioned by persons who are experienced in the field of what is sometimes known as housing research, he failed to note an extremely significant fact and yet can remember it almost, what, two years later. I can't believe it. And yet I don't think that his failure to ask that question is nearly as significant as it might seem, because Mr. Welch

testified that their job was to rent apartments. Mr. Havens testified that their job was to see to it that they didn't fall below 80 percent because that was the road to bankruptcy, that the only way they could make money was to be up closer to the hundred percent mark.

If one approaches a resident manager about an apartment, this Court simply doesn't believe that there would be a policy or a practice on the part of a real estate agency to say that there's nothing available merely because there wasn't anything available at that day and hour. Human experience, leaving aside the evidence, would tell you that simply wouldn't be the way that you get 80 percent occupancy or better.

To the contrary, you say, "I haven't anything today, but we have vacancies with great frequency", or, "We have a vacancy coming up in two weeks, we have a vacancy coming up the first of next month." You tell the prospect what you have, in hopes that it will satisfy him. Everybody does that. Indeed, Mr. Welch's evidence supports that common sense idea that when you're selling, you attempt to sell. And that's what they were doing—selling. So whether or not Mr. Coles asked about August, September, or October, if one applies in the middle of July, unless there is a reason for not telling him that there will be a vacancy in three weeks, one is going to be told of that vacancy, and Mr. Coles wasn't.

In considering the evidence about the policy they had at Havens Realty, it is more likely than not that the reason he wasn't told was because he is a black person, and that's against the law. That can't be a reason. If the reason that he was told was that he had Miss Hatcher with him, and Miss Hatcher was dressed and acted like a floozy or something of that nature, then that's not

against the law. If the reason that he was denied it was because he was married but this woman was not his wife, that's not against the law. If he was out there in cutoffs and sandals and had no shirt on and that's the reason, that's not against the law.

There is no evidence that would lead the Court to believe that there was a reason here other than the fact that he was black. Now, I recognize that puts upon Havens Realty a terrific burden. They don't even remember the incident. They cannot be expected to remember it. But when they have, according to the evidence, set up a policy of discrimination against black persons and a black person is refused an apartment and there is no other explanation for it, I think it is reasonable for the Court to accept the fact that the explanation, more likely than not, is that he was black.

Now, Mr. Coles is entitled to damages. Neither of the parties has addressed that issue to any great extent. And Mr. Coles professed to no great degree of hurt, and yet I can well imagine that there was a hurt feeling. Indeed, I can imagine that he was mad when he learned that he had been discriminated against because of his race, contrary to the laws of the land and contrary to decency. How does one put a price on being hurt and mad? One wishes he had a jury; that's how one does it.

I am going to reserve judgment on the amount of damages because there may be appearances by other class members, and if the Court can develop some experience along the line, I may then have a better idea of how to render a fair judgment as to how the damages can be compensated in money.

In the meantime, I would be happy to hear from either counsel through post-trial briefs as to what is a reasonable compensation in a case of this type.

Now, gentlemen, have I omitted to make a finding that I should have made, or have I omitted to reach a conclusion that I should have reached?

MR. STUTTS: Your Honor, Plaintiffs have asked for injunctive relief and attorney's fees, and it seems appropriate that may be briefed along with the damage issue post trial.

THE COURT: All right, sir. Do you concur with that, Mr. Hogan?

MR. HOGAN: Yes, sir, that's fine. Has the Court adjudicated that all of the members of the class who can prove claims are entitled to relief?

THE COURT: Incidentally, did I make a finding of fact as to Rose Jones?

MR. HOGAN: That was going to be my next question.

THE COURT: I cannot find that it is more likely than not in the case of Mr. Coles that she was the agent carrying out the policy at the particular time that Mr. Coles applied. Accordingly, with respect to Mr. Coles, I do not find her implicated. Of course, she was, under the evidence, evidence which the Court accepts as true, an agent of Havens Realty and its policy to discriminate against black persons. And on behalf of the classes the Court finds against Miss Jones, along with Havens Realty.

Now, with respect to what relief is available to a class, this is my understanding, and I may be wrong, and I ask for your guidance on this. It is my understanding that there having been a finding in favor of the plaintiff class, then under those circumstances a member of the plaintiff class who identifies himself as such and shows himself to be a member of the class is presumptively a victim of the racial discrimination. The burden is upon the defendant

to show that a member of the class either, one, was not discriminated against, or, two, suffered no damages as a result of any such discrimination.

That's my understanding, Mr. Hogan. Is it yours?

MR. HOGAN: Your Honor, we would like the opportunity to brief that question, as well.

THE COURT: Can you answer my question?

MR. HOGAN: Your Honor, it's my view that under the law each class member must still prove his claim, must prove that he was a qualified applicant, that is, that the denial of housing would not have occurred other than because of race. He must prove that he actually made application or came in and asked about an apartment, and he must establish that he was turned down because of his race.

THE COURT: Well, now, under that interpretation, Mr. Hogan, there was no utility at all in having a class action, was there?

MR. HOGAN: That's been my contention all along, Your Honor, but my view would be different had each and every black who applied for an apartment at Havens Realty been turned down. But under the record that we have in this case, I don't see how the Court can conclude that each and every black person who files a claim and says, "I asked for an apartment at Havens Realty, and they told me they didn't have anything available", I don't see how the Court can conclude that person is automatically entitled to relief.

THE COURT: I think it's a question of burden of proof. My understanding is that the burden of proof shifts to the defendant to show that the class member, presumptively a victim of the policy of racial discrimination, was

not in fact discriminated against. I think that burden is upon the defendant, but I will be happy to receive briefs from counsel on that question.

Mr. Stutts, do you concur or disagree with the Court's understanding?

MR. STUTTS: Your Honor, it's my understanding that the utility of the case would have been a finding which would have allowed class members then to come forward with that presumption and then leave the defendants in a position to rebut that presumption if they are able to, the presumption being that they have been discriminated against by the defendants.

THE COURT: In what way did what you said differ from what I said?

MR. STUTTS: I guess that's a long way of saying I agree.

THE COURT: Oh, all right. Is there anything further, gentlemen?

MR. STUTTS: No, Your Honor.

MR. HOGAN: Nothing for defendants, Your Honor.

(Court adjourned at 12:25 p.m.)

APPENDIX B

Coles v. Havens Realty Corporation
(DC, E.D., Va.)

Civil Action No. 79-0024
Decided 2-17-81

CONSENT ORDER

This is a class action brought by the named plaintiff under the Fair Housing Act of 1968, 42 U.S.C. §§ 3601 et seq. and the Civil Rights Act of 1866, 42 U.S.C. § 1982. The Complaint alleges that the defendants have engaged in acts, policies, and patterns of denying housing on the basis of race or color and of preserving and encouraging patterns of racial segregation in available housing by denying apartments to black persons or by "steering" black persons to selected buildings and away from other buildings and by steering white persons to certain selected buildings. Such acts, policies, patterns and practices are in direct violation of the above-referenced statutes.

On February 13, 1980, pursuant to Rule 23(b)(2) of the Federal Rules of Civil Procedure, the Court certified a class composed of all black persons who may have been injured monetarily by the alleged racial steering practices of the defendants on or since January 9, 1977. Plaintiff Paul Allen Coles was designated to act as representative for this class. The Court also certified a subclass composed of all black persons who may have been injured monetarily by the alleged racial steering practices of the

defendants on or since July 13, 1978. Plaintiff Paul Allen Coles was designated to act as representative for this subclass. Notice to prospective class members, as they could best be ascertained from the defendants' records, was mailed on or about May 15, 1980.

The trial of the case of Paul Allen Coles v. Havens Realty Corporation, et al. was held in this Court on June 22 and 23, 1980. The Court finds from the evidence presented in this case that the policies and acts of the defendants Havens Realty Corporation and Rose Jones violated the provisions of the Fair Housing Act of 1968 and the Civil Rights Act of 1866.

The parties are desirous of resolving this matter, including resolution of any remaining issues to be determined by this Court without the time and expense of further litigation, and whereas the defendants hereby agree to comply with the terms and provisions of this Order, and to dismiss the appeal of this action to the Fourth Circuit Court of Appeals, plaintiff agrees not to seek a litigated determination of any remaining unresolved factual or legal issues. On these bases, both the plaintiff and defendants consent to the entry of this Order. Accordingly, it is

ORDERED, ADJUDGED, AND DECREED that the defendants Havens Realty Corporation (hereinafter referred to as "Havens") and Rose Jones are hereby permanently enjoined from violating the terms of the Fair Housing Act of 1968 and the Civil Rights Act of 1866. It is further

ORDERED, ADJUDGED, AND DECREED that the terms and provisions of Sections I and II of this Consent Order shall remain in full force and effect for three (3) years from the date of entry of this Order, at which

time the provisions hereof shall expire automatically; provided, however, that if the Court finds that the defendants materially violate any of the provisions of Sections I and II of this Order, or the injunctive provisions hereof, the Court will determine appropriate relief therefor, including possible extension of Section I and II beyond the date Sections I and II would otherwise terminate.

I. RENTAL PROCEDURES. It is further ORDERED, ADJUDGED AND DECREED that within the time periods specified below, Havens shall implement the following procedures with regard to the rental of apartments at its Camelot Townhouse and Colonial Court complexes.

A. Beginning not later than thirty (30) days from the date of the entry of this Order, Havens shall establish and thereafter continuously maintain and display in its rental office, in a conspicuous location, at all times, a current "Apartment Availability" display indicating the types of rental dwellings which it knows or believes are currently available for rent and which it anticipates will become available. Information concerning these availabilities will be made known, whenever possible, to persons inquiring by telephone about apartments at Colonial Court or Camelot Townhouse. In addition, Havens shall maintain a Rental Availability Activity Record for each of its complexes which shall indicate, by apartment number, on a continuous basis, in a narrative form, such information that becomes known to Havens regarding actual or anticipated dates upon which such apartment will or may become available for rent. When an apartment is leased, the narrative will state the date and time the lease was signed and the name and race of the lessee. Finally, Havens will post in a conspicuous

location, or prepare and have available for distribution to all persons who submit an application for an apartment, a statement of criteria and procedures employed by it in approving or disapproving applications. Although such statement shall disclose what criteria are utilized by Havens, it is not required that it disclose the specifics of such criteria that would enable applicants or potential applicants to complete an application with information with actual knowledge of whether the application will be accepted by Havens. For example, if Havens customarily requires that rental payments not exceed a percentage of gross or net income, Havens shall so state but Havens is not required to disclose what that percentage is. Any restrictions that may be applicable to particular dwelling units (e.g., no pets allowed in a particular section) shall also be stated. Every two weeks, Havens shall mail two copies of the information which is reflected on the display at the end of the business day as well as two copies of the Rental Activity Availability Record to the Virginia Real Estate Commission ("the Commission"). Havens shall also mail a copy of its initial rental criteria disclosure statement to the Commission, showing the specifics of the rental criteria, and thereafter provide the Commission with notice of any changes or modifications thereto. The rental disclosure statement showing the specific rental criteria shall be for the Commission's and Housing Opportunity Made Equal's (HOME's) confidential use and shall not be disseminated to the public.

B. Beginning not later than thirty (30) days from the date of the entry of this Order, Havens shall commence the use of an "Office Registration Form" to obtain information set forth on the form from persons visiting its rental office and inquiring as to the availability of

apartments. Havens shall indicate on all completed forms the race of the applicant by marking a "W" for white persons, a "B" for black persons, and an "O" for persons of other or unknown races. Havens is not required to have the Office Registration Form completed by all persons visiting its rental office and inquiring as to the availability of apartments, and it need only request such persons to complete same. Havens shall accumulate copies of the Office Registration Forms and forward two copies quarterly to the Commission. Upon not less than five (5) working days notice to Havens, the Commission shall have the right to be provided with copies, at the Commission's expense, of rental applications and executed leases, provided, however, that the Commission shall only be so entitled if it makes such request by either (i) identifying the name of the current tenant(s) in respect of whom it desires a copy of the rental application(s) or executed lease(s), or (ii) identifying the apartment number(s) in respect to which it desires a copy of the rental application(s) or executed lease(s) pertaining to the then current tenant or the tenant occupying that apartment immediately prior to the then current tenant. The request for such information shall be made to the Commission by HOME. HOME shall make such requests only when it has a need for such individual applications and executed leases, and HOME shall not make such requests merely for the purpose of collecting such information and documents merely in the event that it may, at some time in the future, have a need for them.

II. DISPLAY OF FAIR HOUSING STATEMENT. It is further ORDERED, ADJUDGED AND DECREED that Havens shall include in all public advertisements of any dwellings offered for rent that are published more

than thirty (30) days after the date of the entry of this Order, on all rental applications, leases, and on the "Apartment Availability" display the following statement in bold-face type:

"HAVENS REALTY CORPORATION IS AN EQUAL HOUSING OPPORTUNITY REALTOR";

provided, however, that the statement shall not be required to be used in advertisements that are smaller than four column inches. Havens shall also display the fair housing poster that is recommended in the United States Department of Housing and Urban Development Guidelines, 37 Fed. Reg. 6700, in a conspicuous location in its office, and the Equal Housing Opportunity logotype and statement on its rental signs as provided in 37 Fed. Reg. 6700.

III. DAMAGES. It is further ORDERED, ADJUDGED AND DECREED that not later than 30 days from the date of this Order Havens shall deposit in the Court registry the sum of Thirteen Thousand Five Hundred Dollars ($13,500) to be distributed among all claimants whose Proof of Claim forms are approved in the manner set forth below.

Claimants shall be required to file Proof of Claim forms not later than sixty days from the date of the approval hearing on this Order. Each Proof of Claim form will be reviewed by counsel for HOME and counsel for Havens. The validity of each claim shall be established presumptively by a prima facie showing of racial discrimination. For purposes of this Consent Order, this standard will be met by a claimant's sworn statement that he sought housing information during the period in question about the Camelot Townhouse/Colonial Court Complex but was told that there were no apartments

available or that there were apartments available only at Colonial Court or that he sought housing information about Camelot Townhouse only but was told that there were no apartments available or that there were apartments available only at Colonial Court. Havens shall have the opportunity to dispute such claims by coming forward with evidence of a neutral (nondiscriminatory) justification for its actions. The claimant shall then have the opportunity to rebut Havens' evidence.

Not later than thirty days from the final date for submission of Proof of Claim forms, counsel shall submit to the United States Magistrate a detailed report of their findings including a descriptive list of all Proof of Claim forms reviewed, the manner in which the review was conducted, and the disposition (with explanation) of each claim. Any claim which is rejected or objected to, or as to which any question is raised, by either designee, will be referred to the Magistrate for such further proceedings as he may deem appropriate to determine its validity. Such proceedings may include, inter alia, the taking of evidence, the holding of hearings, and the submission of written statements. Claimants will be promptly informed as to the disposition of their claims or, where applicable, of their referral to the Magistrate.

At the conclusion of the claims review process, the $13,500 fund will be divided pro-rata among all claimants whose claims have been approved, provided, however, that in no event shall any claimant be entitled to receive in excess of $1,000. Named plaintiff Paul Allen Coles will receive $2,250 which is not included in the $13,500 fund. If, after distribution of the fund, there are funds remaining, such funds shall be returned to Havens.

The Court, in its discretion, may order a final report to be submitted by the Magistrate detailing the ultimate disposition of all claims and funds.

IV. CONTACTING AND COUNSELING PROSPECTIVE CLAIMANTS. In addition to the notice procedures prescribed by the Court, HOME or its representatives may contact persons whom it believes have cause to assert claims pursuant to this Order. Such contacts shall be limited to identifying prospective claimants and then to delivery in person, by posting, by mail or by reading on the telephone the following notice:

Dear _____:

We are writing to inform you that you may file a claim for money damages in a housing discrimination lawsuit.

The lawsuit was filed in January 1979 in the United States District Court in Richmond by Paul Allen Coles against Havens Realty Corporation. The plaintiff claimed that Havens Realty discriminated in the rental of apartments at its Camelot Townhouse and Colonial Court apartments. Havens Realty has agreed to pay the total sum of $13,500 to be divided among persons who can come with sworn claims proving racial discrimination by Havens Realty. Each person proving a claim would be limited to $1,000. It is not necessary for you to have rented an apartment from Havens Realty in order to prove a claim.

If, since January 9, 1977, you have sought apartments at the Colonial Court and Camelot Townhouse apartments and were told by Havens Realty either that nothing was available or that apartments were available only at Colonial Court, you may have a claim for discrimination. If this is the case and you are interested in filing a claim,

contact James F. Stutts, attorney for the plaintiff, at 121 Shockoe Slip, Richmond, Virginia 23219, telephone 643-5192.

Havens shall pay actual attorneys fees in the total aggregate amount of $750 to McSweeney, Stutts & Burtch, for advising any and all claimants with respect to the filing of claims pursuant to this Order. No other attorneys fees incurred by any claimant shall be awarded.

V. ATTORNEY FEES. It is further ORDERED, ADJUDGED AND DECREED that the defendants shall pay to the plaintiff's counsel, in addition to the sum specified in Section IV herein, the total sum of Seventeen Thousand Five Hundred Dollars ($17,500) as attorney's fees.

VI. RELEASE AND DISMISSAL. The payment of the foregoing amounts by the defendants shall constitute a full release, accord, and satisfaction by all plaintiffs, including those that may hereafter be joined by the Court pursuant to the class certification of this action, for all damages, costs, expenses, and fees incurred in all negotiations and/or other activities arising out of the Complaint filed herein.

Except for Sections I and II of this Order which require affirmative duties on the part of the defendants, this action shall stand dismissed.

APPENDIX C

THE CONSTITUTIONAL PROVISION AND STATUTES INVOLVED

United States Constitution, article III, section 2, clause 1:

> Section 2. The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority;—to all Cases affecting Ambassadors, other public Ministers and Consuls;—to all Cases of admiralty and maritime Jurisdictions;—to Controversies to which the United States shall be a Party;—to Controversies between two or more States;—between a State and Citizens of another State;—between Citizens of different States;—between Citizens of the same State claiming Lands under Grants of different States, and between a State, or the Citizens thereof, and foreign States, Citizens or Subjects.

- 14 STAT. 27, 42 U.S.C. § 1982 (1977)

  § 1982. Property rights of citizens

  All citizens of the United States shall have the same right, in every State and Territory, as is enjoyed by white citizens thereof to inherit, purchase, lease, sell, hold, and convey real and personal property.

- 82 STAT. 81, 92 STAT. 2679, 42 U.S.C. § 3602

  § 3602. Definitions

  As used in this subchapter—

(a) "Secretary" means the Secretary of Housing and Urban Development.

(b) "Dwelling" means any building, structure, or portion thereof which is occupied as, or designed or intended for occupancy as, a residence by one or more families, and any vacant land which is offered for sale or lease for the construction or location thereon of any such building, structure, or portion thereof.

(c) "Family" includes a single individual.

(d) "Person" includes one or more individuals, corporations, partnerships, associations, labor organizations, legal representatives, mutual companies, joint-stock companies, trusts, unincorporated organizations, trustees, trustees in bankruptcy, cases under Title 11, receivers, and fiduciaries.

(e) "To rent" includes to lease, to sublease, to let and otherwise to grant for a consideration the right to occupy premises not owned by the occupant.

(f) "Discriminatory housing practice" means an act that is unlawful under section 3604, 3605, or 3606 of this title.

(g) "State" means any of the several States, the District of Columbia, the Commonwealth of Puerto Rico, or any of the territories and possessions of the United States.

• 82 STAT. 83, 88 STAT. 729, 42 U.S.C. § 3604

§ 3604. Discrimination in sale or rental of housing

As made applicable by section 3603 of this title and except as exempted by sections 3603(b) and 3607 of this title, it shall be unlawful–

(a) To refuse to sell or rent after the making of a bona fide offer, or to refuse to negotiate for

the sale or rental of, or otherwise make unavailable or deny, a dwelling to any person because of race, color, religion, sex, or national origin.

(b) To discriminate against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection therewith, because of race, color, religion, sex, or national origin.

(c) To make, print, or publish, or cause to be made, printed, or published any notice, statement, or advertisement, with respect to the sale or rental of a dwelling that indicates any preference, limitation, or discrimination based on race, color, religion, sex, or national origin, or an intention to make any such preference, limitation, or discrimination.

(d) To represent to any person because of race, color, religion, sex, or national origin that any dwelling is not available for inspection, sale, or rental when such dwelling is in fact so available.

(e) For profit, to induce or attempt to induce any person to sell or rent any dwelling by representations regarding the entry or prospective entry into the neighborhood of a person or persons of a particular race, color, religion, sex, or national origin.

• 82 STAT. 83, 88 STAT. 729, 42 U.S.C. § 3605

§ 3605. Discrimination in financing of housing

After December 31, 1968, it shall be unlawful for any bank, building and loan association, insurance company or other corporation, association, firm or enterprise whose business consists in whole or in part in the making of commercial real estate

loans, to deny a loan or other financial assistance to a person applying therefor for the purpose of purchasing, constructing, improving, repairing, or maintaining a dwelling, or to discriminate against him in the fixing of the amount, interest rate, duration, or other terms or conditions of such loan or other financial assistance, because of the race, color, religion, sex, or national origin of such person or of any person associated with him in connection with such loan or other financial assistance or the purposes of such loan or other financial assistance, or of the present or prospective owners, lessees, tenants, or occupants of the dwelling or dwellings in relation to which such loan or other financial assistance is to be made or given: Provided, That nothing contained in this section shall impair the scope or effectiveness of the exception contained in section 3603(b) of this title.

- 82 STAT. 84, 88 STAT. 729, 42 U.S.C. § 3606

§ 3606. Discrimination in provision of brokerage services

After December 31, 1968, it shall be unlawful to deny any person access to or membership or participation in any multiple-listing service, real estate brokers' organization or other service, organization, or facility relating to the business of selling or renting dwellings, or to discriminate against him in the terms or conditions of such access, membership, or participation, on account of race, color, religion, sex, or national origin.

- 82 STAT. 85, 42 U.S.C. § 3610

§ 3610. Enforcement

Person aggrieved; complaint; copy; investigation; informal proceedings; violations of secrecy; penalties

(a) Any person who claims to have been injured by a discriminatory housing practice or who believes that he will be irrevocably injured by a discriminatory housing practice that is about to occur (hereafter "person aggrieved") may file a complaint with the Secretary. Complaints shall be in writing and shall contain such information and be in such form as the Secretary requires. Upon receipt of such a complaint the Secretary shall furnish a copy of the same to the person or persons who allegedly committed or are about to commit the alleged discriminatory housing practice. Within thirty days after receiving a complaint, or within thirty days after the expiration of any period of reference under subsection (c) of this section, the Secretary shall investigate the complaint and give notice in writing to the person aggrieved whether he intends to resolve it. If the Secretary decides to resolve the complaint, he shall proceed to try to eliminate or correct the alleged discriminatory housing practice by informal methods of conference, conciliation, and persuasion. Nothing said or done in the course of such informal endeavors may be made public or used as evidence in a subsequent proceeding under this subchapter without the written consent of the persons concerned. Any employee of the Secretary who shall make public any information in violation of this provision shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined not more than $1,000 or imprisoned not more than one year.

Complaint; limitations; answer; amendments; verification

(b) A complaint under subsection (a) of this section shall be filed within one hundred and eighty days after the alleged discriminatory housing

practice occurred. Complaints shall be in writing and shall state the facts upon which the allegations of a discriminatory housing practice are based. Complaints may be reasonably and fairly amended at any time. A respondent may file an answer to the complaint against him and with the leave of the Secretary, which shall be granted whenever it would be reasonable and fair to do so, may amend his answer at any time. Both complaints and answers shall be verified.

Notification of State or local agency of violation of State or local fair housing law; commencement of State or local law enforcement proceedings; certification of circumstances requisite for action by Secretary

(c) Wherever a State or local fair housing law provides rights and remedies for alleged discriminatory housing practices which are substantially equivalent to the rights and remedies provided in this subchapter, the Secretary shall notify the appropriate State or local agency of any complaint filed under this subchapter which appears to constitute a violation of such State or local fair housing law, and the Secretary shall take no further action with respect to such complaint if the appropriate State or local law enforcement official has, within thirty days from the date the alleged offense has been brought to his attention, commenced proceedings in the matter, or, having done so, carries forward such proceedings with reasonable promptness. In no event shall the Secretary take further action unless he certifies that in his judgment, under the circumstances of the particular case, the protection of the rights of the parties or the interests of justice require such action.

Commencement of civil actions; State or local remedies available; jurisdiction and venue; findings; injunctions; appropriate affirmative orders

(d) If within thirty days after a complaint is filed with the Secretary or within thirty days after expiration of any period of reference under subsection (c) of this section, the Secretary has been unable to obtain voluntary compliance with this subchapter, the person aggrieved may, within thirty days thereafter, commence a civil action in any appropriate United States district court, against the respondent named in the complaint, to enforce the rights granted or protected by this subchapter, insofar as such rights relate to the subject of the complaint: Provided, That no such civil action may be brought in any United States district court if the person aggrieved has a judicial remedy under a State or local fair housing law which provides rights and remedies for alleged discriminatory housing practices which are substantially equivalent to the rights and remedies provided in this subchapter. Such actions may be brought without regard to the amount in controversy in any United States district court for the district in which the discriminatory housing practice is alleged to have occurred or be about to occur or in which the respondent resides or transacts business. If the court finds that a discriminatory housing practice has occurred or is about to occur, the court may, subject to the provisions of section 3612 of this title, enjoin the respondent from engaging in such practice or order such affirmative action as may be appropriate.

Burden of proof

(e) In any proceeding brought pursuant to this section, the burden of proof shall be on the complainant.

Trial of action; termination of voluntary compliance efforts

(f) Whenever an action filed by an individual, in either Federal or State court, pursuant to this section or section 3612 of this title, shall come to trial the Secretary shall immediately terminate all efforts to obtain voluntary compliance.

• 82 STAT. 88, 42 U.S.C. § 3612

§ 3612. Enforcement by private persons

Civil action; Federal and State jurisdiction; complaint; limitations; continuance pending conciliation efforts; prior bona fide transactions unaffected by court orders

(a) The rights granted by sections 3603, 3604, 3605, and 3606 of this title may be enforced by civil actions in appropriate United States district courts without regard to the amount in controversy and in appropriate State or local courts of general jurisdiction. A civil action shall be commenced within one hundred and eighty days after the alleged discriminatory housing practice occurred: Provided, however, That the court shall continue such civil case brought pursuant to this section or section 3610(d) of this title from time to time before bringing it to trial if the court believes that the conciliation efforts of the Secretary or a State or local agency are likely to result in satisfactory settlement of the discriminatory housing practice complained of in the complaint made to the Secretary or to the local or State agency and which practice forms the basis for the action in court: And provided, however, That any sale, encumbrance, or rental consummated prior to the issuance of any court order issued under the authority of this Act, and involving a bona fide purchaser, encumberancer,

or tenant without actual notice of the existence of the filing of a complaint or civil action under the provisions of this Act shall not be affected.

Appointment of counsel and commencement of civil actions in Federal or State courts without payment of fees, costs, or security

(b) Upon application by the plaintiff and in such circumstances as the court may deem just, a court of the United States in which a civil action under this section has been brought may appoint an attorney for the plaintiff and may authorize the commencement of a civil action upon proper showing without the payment of fees, costs, or security. A court of a State or subdivision thereof may do likewise to the extent not inconsistent with the law or procedures of the State or subdivision.

Injunctive relief and damages; limitation; court costs; attorney fees

(c) The court may grant as relief, as it deems appropriate, any permanent or temporary injunction, temporary restraining order, or other order, and may award to the plaintiff actual damages and not more than $1,000 punitive damages, together with court costs and reasonable attorney fees in the case of a prevailing plaintiff: Provided, That the said plaintiff in the opinion of the court is not financially able to assume said attorney's fees.

• 82 STAT. 88, 42 U.S.C. § 3613

§ 3613. Enforcement by Attorney General; issues of general public importance; civil action; Federal jurisdiction; complaint; preventive relief

Whenever the Attorney General has reasonable cause to believe that any person or group of persons

is engaged in a pattern or practice of resistance to the full enjoyment of any of the rights granted by this subchapter, or that any group of persons has been denied any of the rights granted by this subchapter and such denial raises an issue of general public importance, he may bring a civil action in any appropriate United States district court by filing with it a complaint setting forth the facts and requesting such preventive relief, including an application for a permanent or temporary injunction, restraining order, or other order against the person or persons responsible for such pattern or practice or denial of rights, as he deems necessary to insure the full enjoyment of the rights granted by this subchapter.

- 82 STAT. 89, 42 U.S.C. § 3617

§ 3617. Interference, coercion, or intimidation; enforcement by civil action

It shall be unlawful to coerce, intimidate, threaten, or interfere with any person in the exercise or enjoyment of, or on account of his having exercised or enjoyed, or on account of his having aided or encouraged any other person in the exercise or enjoyment of, any right granted or protected by section 3603, 3604, 3605, or 3606 of this title. This section may be enforced by appropriate civil action.

CERTIFICATE OF SERVICE

I hereby certify that three (3) copies of the foregoing Brief for Respondents have been served by mail on Everette G. Allen, Jr., Hirschler, Fleischer, Weinberg, Cox & Allen, Post Office Box 12085, Four North Fourth Street, Richmond, Virginia 23241, Counsel of Record for the Petitioners.